

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SAN FRANCISCO DIVISION OF JUDGES

STRATEGIC RESOURCES, INC.,

And

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO, DISTRICT LODGE W-24

Cases 19-CA-070217  
19-CA-070224  
19-CA-072173  
19-CA-072184  
19-CA-077901  
19-CA-088406  
19-CA-103576  
19-CA-111874

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DECISION

Statement of the Case

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Seattle, Washington, on March 25–27 and August 5 and 6, 2014, upon the Order consolidating cases, consolidated complaint and notice of hearing and partially revoking settlement agreement, as amended (complaint), issued on November 27, 2013, by the Regional Director for Region 19.

The complaint alleges that Strategic Resources, Inc., Respondent, violated Section 8(a)(1) and (5) of the Act by making unilateral changes to its formula for calculating holiday pay for bargaining unit employees, by unilaterally changing paid waiting time, and by promulgating a new work rule requiring employees to report their time daily into Respondent’s “Deltec” system.

Respondent is alleged to have violated Section 8(a)(5) of the Act by failing to furnish or unreasonably delaying in furnishing the International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge W-24 (Union), with information necessary to its function as

bargaining unit representative or to monitor terms of the settlement agreement previously reached.

Respondent is also alleged to have violated Section 8(a)(5) of the Act by failing to meet at reasonable times and places for bargaining, by failing to bargain with the Union for a confidentiality agreement, protective order or other procedure to address Respondent's confidentiality concerns, by taking the position that impasse had been reached in bargaining with the Union on January 15, 2013, concerning a confidentiality agreement, and by withdrawing recognition from the Union as exclusive bargaining representative of its bargaining unit employees on August 19, 2013.

The complaint also sets aside a settlement agreement reached between the parties on January 30, 2013, based upon the complaint<sup>1</sup> issued by the Regional Director for Region 19 on November 28, 2012 in cases 19-CA-070217, 19-CA-070224, 19-CA-072173, 19-CA-072184, 19-CA-077901, and 19-CA-088406 for non compliance and for the commission of further unfair labor practices.

Respondent filed a timely answer to the complaint stating it had committed no wrongdoing.

#### Findings of Fact

Upon the entire record, including the briefs from counsel for the General Counsel and Respondent, I make the following findings of fact.

#### I. Jurisdiction

Respondent stipulated<sup>2</sup> that it is a Virginia corporation located in McLean, Virginia, with an office and place of business on Joint Base Lewis McChord (JBLM) in the State of Washington where it has been engaged in the business of providing transportation support services to the U. S. Department of Defense. During the last 12 months Respondent has provided services to the U. S. Department of Defense valued in excess of \$50,000. It further stipulated that it is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.<sup>3</sup>

#### II. Labor Organization

Respondent admitted in its answer and I find that International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge W-24 (Union), is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>1</sup> GC Exh. 1((y)).

<sup>2</sup> GC Exh. 57.

<sup>3</sup> Id..

### III. The Alleged Unfair Labor Practices

#### A. Background Facts

5 From March 12, 2010 until April 2011, Logistics Solutions Group, Inc. (LSG), under contract with the U.S. Department of Defense, provided transportation services for Army troops at Joint Base Lewis McChord (JBLM) in the State of Washington. On March 12, 2010 the Board certified International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge W-24 (Union) as the exclusive collective-bargaining representative of the LSG employees in the following unit:

15 Included: All full-time and regular, part-time employees employed by the employer out of the following Joint Base Lewis McChord, Washington operations, Warrior Transition Battalion (WTB), 1st Joint Mobilization Battalion (JMB), and Transportation Motor Pool (TMP) who are employed as dispatchers and drivers of a vehicle in the transportation of military personnel.

20 Excluded: All confidential and managerial employees, guards and supervisors as defined in the Act.

25 Since about April 27, 2011, Respondent, under contract with the U.S. Department of Defense, replaced LSG and has provided transportation services for Army troops at Joint Base Lewis McChord (JBLM) in the State of Washington. Respondent has continued LSG's operation in unchanged form and hired a majority of the individuals in the above-described bargaining unit who were employed by LSG.<sup>4</sup> Respondent further stipulated<sup>5</sup> that on May 12, 2011, it recognized the Union as the exclusive collective-bargaining representative of the above described unit of employees. On May 12, 2011, Respondent notified the Union that it had implemented initial terms and conditions of employment and recognized its obligation to negotiate a new collective-bargaining agreement.

#### 1. Respondent's management and bargaining team

35 Randy Cox (Cox) is the project manager for the CSBS Contract, which involves 11 total task areas, including the transport or movement branch function performed by bargaining unit employees. Steve White was Respondent's movement branch chief. Before White, Koral Coon (Coon) served in that role. Anita Lawson (Lawson) is Respondent's corporate director of human resources and training.

45 Respondent has had a series of attorneys as its lead negotiators during bargaining with the Union. From approximately September 2011 to December 2011, Respondent was represented by Charles Thompson. (Thompson) From December 2011 to about January 2013, Respondent retained Warren Martin (Martin). Since at least January 2013, Respondent has been represented in bargaining by its current counsel, Mark Hutcheson. (Hutcheson)

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<sup>4</sup> GC Exh. 6.

<sup>5</sup> Id..

## 2. Union's officers and representatives

Kevin Cummings (Cummings) has been the Union's grand lodge representative for over 7 years. In September 2011, Cummings took over negotiations with Respondent from James "Bud" Michel (Michel). Union Business Representative Wayne Thompson (Thompson) assisted Cummings.

## 3. Posthearing evidentiary rulings

On March 25, 2014, Respondent offered into evidence as Respondent's Exhibit 4 a slide from Respondent's new hire and orientation power point. After voir dire examination, counsel for the General Counsel stated that she did not have an objection to the exhibit, but requested an opportunity to review the entire document that had been called for production under General Counsel's subpoena but had not yet been provided. I admitted Respondent's Exhibit 4 into the record subject to Respondent providing the entire document to General Counsel, who could then offer the entire document into the record.

On August 6, 2014, the last day of the hearing, Respondent had yet to comply with the General Counsel's subpoena and provide the entire new hire and orientation power point. Prior to the close of the hearing, I noted that General Counsel had not yet had an opportunity to review or offer into evidence the complete new hire and orientation power point document. Accordingly, I allowed counsel for the General Counsel until August 29, 2014, to offer it as General Counsel's exhibit 79, subject to any objection by Respondent.

Also on August 6, 2014, Respondent offered into evidence Respondent's exhibits 18 through 22. These exhibits consist of over 300 pages of summary spreadsheets. Respondent's exhibit 18 purports to be a summary of its form 2401 dispatch sheets for the period April 27 through December 31, 2011, exhibit 19 claims to be a summary of nonsurge missions for 2011, exhibit 20 is a summary of 2401 forms for 2012, exhibit 21 is a summary of nonsurge missions for 2012, and exhibit 22 purports to be a summary of 2401 forms for 2013.

At the hearing, counsel for the General Counsel objected to the introduction into the record of Respondent's Exhibits 18–22 on the ground that they did not comply with Federal Rule of Evidence 1006 because Respondent had not given enough time for General Counsel to determine if the underlying documents supported the purported summaries. General Counsel also objected to the receipt of Respondent's Exhibits 19 and 21, as they constituted compliance related information.

At the hearing Respondent contended that it had already provided General Counsel with all of the underlying documents relied on in creating Respondent's Exhibits 18 through 22, and that the exhibits were relevant. Since Respondent had only belatedly provided counsel for the General Counsel with four boxes of documents, allegedly containing documents to support Respondent's Exhibits 18 through 22, I reserved ruling on Respondent's Exhibits 18 through 22 until I issued my decision in order to provide General Counsel an opportunity to review the underlying documents and file written objections to these exhibits. I also gave Respondent an opportunity to respond in writing to General Counsel's objections.

On August 28, 2014, General Counsel filed its offer of General Counsel’s Exhibit 79 and counsel for the General Counsel’s objections to Respondent’s Exhibits 18, 19, 20, 21, and 22. On September 5, 2014, Respondent filed its reply.

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a. The power point document

When Respondent finally provided the full new hire and orientation power point, it was replete with redactions that I had not authorized. However, since there is no objection from General Counsel to the redactions and in the absence of any objection to its receipt into the record from Respondent, I will receive General Counsel’s Exhibit 79.

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b. Respondent’s summaries

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In its motion, counsel for the General Counsel argues that Respondent’s exhibits 18 through 22 should be rejected. As to exhibits 19 and 21, since backpay is not properly in issue at this time, General Counsel urges rejection of these exhibits. As to exhibits 18, 20, and 22 General Counsel takes the position that Respondent failed to provide dispatcher logs, timecards, and drivers’ logs for the entire time period in question, making it impossible to verify the accuracy of the summaries. And that the summaries are not supported by documents but by assumptions made by the maker of the summary, Coon.

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Respondent argues that exhibits 18 through 22 are supported by documents, claiming it provided all of the supporting documents to General Counsel. It also contends that exhibits 19 and 21 are not compliance documents but show that there was no change in wait times for drivers in outbound THA missions in defense to complaint allegation 6(b).

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Federal Rule of Evidence 1006, provides:

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The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

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Under Rule 1006, the summary is admissible only if the underlying documents would be admissible and made available to opposing counsel for examination and a proper foundation for the summary is established. *United States v. Pelullo*, 964 F.2d 193, 204 (3d Cir. 1992). In *Monfort of Colorado, Inc.*, 298 NLRB 73, 82 fn. 37 (1990), the Board advised that the judge should carefully weigh the circumstances under which the summary was prepared and whether it reflects the author’s subjective view or interpretation of underlying information.

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Respondent’s movement branch chief, Koral Coon (Coon), created the summaries which comprise Respondent’s exhibits 18 through 22. Coon stated that she created Respondent’s exhibits 18–22 from the form 2401s,<sup>6</sup> dispatcher logs,<sup>7</sup> Deltek timesheets,<sup>8</sup> timecards or punch cards,<sup>9</sup> and drivers’ logs.<sup>10</sup>

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<sup>6</sup> GC Exhs. 59–61.



According to Coon, Respondent’s exhibit 18 not only reflects information from the 2401 forms but includes information she created. Thus, column one heading “line number” does not reflect a number of a particular form 2401 but is a numbering system she created. The column heading “SURGE” does not come from any underlying document but is her own interpretation of other unspecified documents.<sup>11</sup> The column heading “Does not count as Group THA because” was also created by Coon.<sup>12</sup> Coon did not explain how or why she reached this particular conclusion for each mission. It is not a heading on any of the underlying documents.

Coon testified that Respondent’s Exhibit 19 represents nonsurge missions.<sup>13</sup> While this summary has the same headings as Respondent’s Exhibit 18, Coon added additional headings next to “per driver information” starting with “driver name,” information that apparently came from driver’s logs, punch cards, and Delteck time, but without specifying which underlying document is being summarized. In addition Coon added headings for “hours gained and lost,” “per hour pay,” “health and welfare pay” and “possible pay due.” Coon testified that the “possible pay due” calculations are her own interpretation of other records.<sup>14</sup>

None of the underlying documents contains a heading “Cargo/Passenger” column as set forth in Respondent’s Exhibits 18–22. While it is apparent that Coon gleaned this information from a variety of sources, it is nevertheless her conclusion not a summary of any underlying documents.

Moreover, Respondent stipulated it did not use dispatcher logs in 2011 and could not locate dispatcher logs for 61 missions in 2012 and 2013.<sup>15</sup> Counsel for the General Counsel represents that many 2011 missions are classified as “surge” missions and almost all of the missions with missing dispatcher logs in 2012 and 2013 are classified as “surge” missions on Respondent’s summaries.

Respondent’s Exhibits 20 and 22 are essentially the same as Respondent’s Exhibit 18 and Respondent’s Exhibit 21 is the same as exhibit 19.

c. Ruling on admissibility of Respondent’s Exhibits 18–22

What Respondent has created in Respondent’s Exhibits 18–22 are not summaries of documents as is contemplated in Federal Rule of Evidence 1006 but rather a hybrid of both document summaries and Coon’s interpretation of what various other unspecified documents may represent. For the trier of fact these exhibits do not make the job easier but more difficult as

<sup>7</sup> GC Exhs. 62–63.

<sup>8</sup> GC Exhs. 64–66.

<sup>9</sup> R. Exh. 15.

<sup>10</sup> R. Exh. 17.

<sup>11</sup> Tr. 520–521, LL. 23–25 and 1–9.

<sup>12</sup> Id. at p. 521, lines 12–13.

<sup>13</sup> Id. p. 523, LL. 18–24.

<sup>14</sup> Id. p. 528, LL. 3–24.

<sup>15</sup> GC Exh. 57, par. 15.

I have to parse out of Respondent's Exhibits 18–22 what is a true summary and what is Coon's opinion. It is more reliable to review the underlying documents themselves, General Counsel's Exhibits 3 and 58–66 as well as Respondent's Exhibits 15–17, than to rely on these summaries. Following the Board's admonition in *Monfort of Colorado, Inc.*, 298 NLRB 73, 82 fn. 37 (1990),  
 5 in weighing the circumstances under which the summaries were prepared I find at least in part that they reflect the author's subjective view or interpretation of underlying information. Accordingly, I reject Respondent's Exhibits 18–22 and will place them in the rejected exhibits file.

#### 10 4. The alleged unfair labor practices

Since the nature of this case does not lend itself to a chronology of the facts. I will discuss the facts and analysis in discrete sections as set forth in the complaint herein.

#### 15 B. Unilateral Changes

Counsel for the General Counsel alleges that Respondent violated Section 8(a)(5) of the Act by making certain unilateral changes to employees' terms and conditions of employment without notice to or bargaining with the Union.

#### 20 1. Holiday pay

##### 25 a. Facts

Complaint paragraph 6(a) alleges that Respondent altered its formula for calculating holiday pay for bargaining unit employees on or about September 5, 2011.

30 Ausley testified that under LSG drivers received prorated holiday pay. If a driver worked 40 hours the week before the holiday, they got 8 hours holiday pay. If the driver worked 20 hours the week before the holiday, they got 4 hours holiday pay. The parties stipulated that Respondent's drivers were paid holiday pay for New Year's Day, Martin Luther King, Jr.'s  
 35 Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.<sup>16</sup>

While Respondent's employee orientation materials<sup>17</sup> specify that employees would receive prorated holiday pay, Respondent's project manager at JBLM Cox admitted that when  
 40 Respondent began operations in April 2011, it began the practice of paying the unit employees 8 hours' pay for each holiday regardless of how many hours they worked the previous week. Respondent's payroll records<sup>18</sup> reflect that this practice occurred over a 3-month period including Memorial Day, Independence Day, and Labor Day in 2011. However, at hearing, both Cox and  
 45 Lawson claimed that paying employees 8 hours per holiday was an "error" and inconsistent with Respondent's practices, but neither specified what type of error, how the error was discovered, why the error occurred, or whether they had informed the Union of this error

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<sup>16</sup> GC Exhs. 57 and 57(a).

<sup>17</sup> GC Exhs, 79, p. 32.

<sup>18</sup> GC Exh. 58.

Starting on October 10, 2011, Columbus Day, Respondent began prorating bargaining unit employees' holiday pay as shown in Respondent's payroll records.<sup>19</sup>

5           There is no evidence that the Union was given notice of this change or an opportunity to bargain over it. (Tr. 77–78.)

b. The analysis

10           General Counsel argues that Respondent's change from non proration of holiday pay to proration in October 2011, was done without notice to or bargaining with the Union and violated Section 8(a)(5) and (1) of the Act. Respondent contends that the initial payment of full holiday pay was an administrative error and not a unilateral change citing *Eagle Transport Corp.*, 338  
15 NLRB 489 (2002), and *Boeing Co.*, 212 NLRB 116 (1974)

20           During the course of a collective-bargaining relationship an employer must refrain from making substantial and material unilateral changes concerning mandatory subjects of bargaining. Mandatory subjects of bargaining include wages, hours and other terms and conditions of employment. *NLRB v. Katz*, 369 U.S. 736 (1962). Changes to payment of wages, including holiday pay, are mandatory subjects of bargaining. *Waxie Sanitary Supply*, 337 NLRB 303, 304 (2001); *J. W. Rex Co.*, 308 NLRB 473, 497-98 (1992).

25           In *JPH Mgt., Inc.*, 337 NLRB 72, 73 (2001), the Board held that a mistaken wage increase granted on July 1 and rescinded on August 10 was a violation of section 8(a)(5) of the Act as a unilateral change absent bargaining to impasse. Likewise in *Atlantis Health Care Group, Inc.*, 356 NLRB No. 26, slip op. at 4 (2010) the administrative law judge found that the March 9 revocation of an erroneously granted February wage increase was an unlawful unilateral  
30 change and absent impasse or notice to and bargaining with the Union violated Section 8(a)(5) of the Act.

35           Respondent's reliance on *Eagle Transport Corp.*, supra and *Boeing Co.*, supra is misplaced. In each of those cases there was either a computer glitch resulting in a brief wage increase or a clerical error resulting in a simple misclassification of employees who were never in the bargaining unit.

40           Here the alleged error lasted from April 2011 through September 2011, a period of 6 months. I find that having established a practice of paying bargaining unit employees non prorated holiday pay, Respondent was under an obligation to bargain with the Union before making a change to prorate holiday pay. By failing to do so Respondent violated Section 8(a)(5) and (1) of the Act.

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<sup>19</sup> GC Exh. 64–66.

## 2. Change to paid waiting time for outbound THA missions

### a. Facts

Complaint paragraph 6(b) alleges that on or about November 17, 2011, Respondent changed bargaining unit mission requirements, including reducing paid waiting time during THA missions.

As part of Respondent's duties under its contract with the Department of Defense, it transported outbound troops in buses to the airfield on JBLM. The area where the troops waited to board their outbound plane was known as the troop holding area or THA. Respondent's bargaining unit employees drove the buses which carried the outbound troops from various locations around JBLM to the THA. The drivers usually brought the troops to the THA about two hours before takeoff. Katherine Ausley (Ausley) worked as a lead driver and dispatcher in the bargaining unit first with LSG from 2006 to April 2011 then with Respondent from April 2011 to October 2013. Ausley was also a member of the Union and was on the Union's bargaining team. Drivers were scheduled from day to day and received their driving schedule the day before they were scheduled to drive. The 2401 form was the dispatch schedule for drivers, listing their assignments. As lead driver, Ausley communicated with the dispatcher about what route to follow. Coon was Ausley's supervisor. Cox supervised Coon.

Ausley said that before June 2011, after dropping off the outbound soldiers at the THA, all buses waited 30 minutes at the THA after "wheels up." The term "wheels up" referred to the time when the aircraft loaded with soldiers lifted off the runway at McChord Airfield. The drivers waited 30 minutes in the event the plane had to return to the airfield. Ausley testified that the exception to the 30 minute wait rule occurred when there was a "push" or "surge" of soldiers, i.e., when a large number of troops were being flown out of the THA at McChord requiring multiple aircraft. In a "push" the drivers dropped off the soldiers and immediately returned to JBLM for another load of troops. Ausley's testimony that drivers waited at the THA on outbound missions for 30 minutes after wheels up until June 2011 was corroborated by bargaining unit driver Joel Davis.

Ausley testified that in June 2011, the practice of waiting 30 minutes after "wheels up" changed. A dispatcher, either Aaron or Sheri, told Ausley that only the lead driver was to wait for 30 minutes after "wheels up." About 2 weeks later Ausley was at the THA when all the buses were dropping troops and immediately leaving for the transportation motor pool (TMP). A civilian department of defense employee, guiding the operations at the THA told Ausley that the buses were supposed to wait until 30 minutes after "wheels up." Ausley testified without contradiction that she called Coon and told her about the issue with the 30 minute wait period. Coon said, "Who do you work for? You work for SRI. You will do exactly what I tell you to do. You will send those buses back now."<sup>20</sup> TR 43, line18-20

The dispatch forms 2401<sup>21</sup> for the period April 27, 2011 to June 20, 2011, reflect that there were 25 outbound THA missions that were not surges. The 2401 dispatch forms list the

<sup>20</sup> Tr. p. 43, ll. 18–20.

<sup>21</sup> GC Exh. 59. There are no 2401 dispatch forms prior to April 27, 2011 in the record.

drivers assigned to the THA missions. During the April 27-June 28, 2011 period Ausley is not listed as a driver at all. Joel Davis is listed as a driver on two of the 25 THA missions during this period of time. While it is clear from Respondent's April through June 2011 payroll records<sup>22</sup> that Ausley worked for Respondent, it is unclear from Ausley's testimony if she worked as a driver or a dispatcher. Given that her name does not appear on the form 2401 dispatch records as a driver until at the earliest June 29, 2011,<sup>23</sup> I will infer that during that period she worked for Respondent as a dispatcher.

According to Coon, Respondent had no practice of requiring drivers to remain at the THA on outbound troop missions for 30 minutes after wheels up. Coon admitted that the Army might require drivers to remain at the THA after wheels up but that this was on a case by case basis.

Respondent points to a 2401 form<sup>24</sup> from LSG to show that in April 2011 LSG had no policy of having drivers wait at the THA for 30 minutes past wheels up for outbound THA missions. The LSG 2401 shows the April 1, 2011 mission of driver Root. The 2401 shows a wheels up time of 2:05 a.m. Root's driver's log for that mission show that he departed the THA at 11 p.m., precluding waiting til 30 minutes after wheels up. Similarly the 2401 entry for driver Fox shows wheels up at 9:50 a.m. and he departs the THA at 7:40 a.m.

Respondent's August 2011 Movements Section standard operating procedures were written by Coon. The operating procedures provide, "9. One person will be assigned to stay at THA, all other bus drivers will drop their pax off, and return to TMP."<sup>25</sup> Coon testified that this requirement was omitted from the LSG operating procedures which she also wrote. This policy is reflected in the 2401 forms. After July 15, 2011, the forms 2401<sup>26</sup> contain entries generally indicating only one driver out of several was to remain at the THA until wheels up.

In a September 21, 2012 memo<sup>27</sup> Respondent announced a temporary change in waiting policy of allowing its drivers on outbound THA missions to wait at the THA until "wheels up." Coon announced that this policy was to be in effect until completion of construction at the McChord THA. This policy lasted about 2 weeks.

The only mention of all drivers staying at the THA for 30 minutes after wheels up is an entry in the December 21, 2012 driver's dispatch form 2401 stating, "All drivers stay until ½ hour after wheels up."<sup>28</sup> After entering into a settlement agreement with the Board, in a January

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<sup>22</sup> GC Exh. 64.

<sup>23</sup> GC Exh. 59, pp. 176, 094 and 098 list a driver named Kathy. Ausley's first name is Katherine. A driver named Ausley is not listed until p. 111 on July 14, 2011.

<sup>24</sup> R. Exh. 14.

<sup>25</sup> GC Exh. 55, p. 6.

<sup>26</sup> G C Exh. 59, pp. 113, 117-120, 122, 128-129, 023, 043, 304, 305, 324, 341, 285-286, 292, 057, 075; GC Exh. 60, pp. 057, 178-180.

<sup>27</sup> GC Exh. 2.

<sup>28</sup> GC Exh. 60, p. 412.

2013 meeting Coon told drivers that they would now be staying at the THA until 30 minutes after “wheels up”

Respondent contends that Ausley was incompetent to testify regarding Respondent’s policies regarding how long to remain at the THA after wheels up. Respondent contends that only Coon is competent to give such testimony as she was the person responsible for conducting all troop movements. Coon also performed this function for LSG, Respondent’s predecessor. She wrote both the standard operating procedures noted above for Respondent and LSG.

b. The analysis

During the course of a collective-bargaining relationship an employer must refrain from making substantial and material unilateral changes concerning mandatory subjects of bargaining. Mandatory subjects of bargaining include wages, hours, and other terms and conditions of employment. *NLRB v. Katz*, 369 U.S. 736 (1962). The Board has concluded that paid waiting times, are a mandatory subject of bargaining. *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1067 (2001).

The starting point to establish a breach of Section 8(a)(5) of the Act for making a unilateral change to a mandatory subject of bargaining, requires General Counsel to establish that Respondent has made a change to an extant term or condition of employment without notice to or bargaining with the Union.

While the complaint alleges that on about November 17, 2011, Respondent reduced paid waiting time during THA missions, in its brief General Counsel contends that in June 2011, Respondent unilaterally rescinded its policy of paying all bargaining unit drivers for waiting 30 minutes following wheels up on outbound troop THA missions.

General Counsel has attempted to show that when Respondent began operating at JBLM in April 2011, it established a practice of paying drivers for waiting 30 minutes after wheels up for outbound nonsurge THA missions. The evidence of this practice came in the form of testimony from bargaining unit drivers Ausley and Davis. Both Ausley and Davis testified that Respondent told them to wait for 30 minutes after wheels up at the THA when on nonsurge THA missions.

However, contrary to Ausley’s testimony, the 2401 drivers’ dispatch forms for the period April to July 2011 are devoid of evidence that she drove any missions for Respondent at JBLM. While payroll records reflect she was employed by Respondent during this time, it is possible she worked during this period as a dispatcher, as she testified.

As for Davis, from April to July 2011, he was assigned to only 2 of 25 outbound THA missions. Given Davis’ limited experience in driving only two THA missions from April to July 2011 and Ausley’s apparent absence of any such experience, they were not in a position to know what Respondent’s policy was concerning waiting at the THA.

Both Ausley and Davis testified that Respondent continued the LSG policy of having drivers wait 30 minutes after wheels up on outbound THA missions. Yet the only objective

evidence of the LSG policy reflects that in April 2011 LSG drivers did not wait 30 minutes after wheels up to leave the THA.

Neither Ausley’s conversation with Respondent’s dispatcher in June 2011 that only the lead driver was to wait for 30 minutes after wheels up nor her conversation with a civilian department of defense employee that the buses were supposed to wait until 30 minutes after wheels up establish that Respondent had a policy in effect of allowing drivers to wait for 30 minutes after wheels up. Coon, after learning of the civilian employee’s conversation with Ausley, immediately told Ausley that she worked for SRI and that she would send those buses back now is consistent with Coon’s testimony that on occasion the Army sometimes told drivers to wait 30 minutes.

Moreover, it is unlikely that these conversations happened in June 2011 as Ausley claimed. It is more likely that they occurred in late June or July 2011, as it does not appear that Ausley had an assignment to drive until late June or mid-July 2011. This is more consistent with Respondent’s creation of its August 2011 movements section standard operating procedures providing only one driver was to stay at the THA and is reflected in the 2401 forms after July 15, 2011.

For the reasons discussed above, I do not credit the testimony of Ausley or Davis that prior to July 2011 Respondent had established a policy of having bargaining unit drivers wait for 30 minutes at the THA after wheels up in nonsurge THA missions.

Having found there is insufficient evidence that Respondent had established the practice of having all bargaining unit drivers wait for 30 minutes at the THA after wheels up in nonsurge THA missions, I find Respondent did not make a unilateral change in terms and conditions of employment. I will recommend the dismissal of complaint allegation 6(b).

3. Promulgating a new work rule requiring bargaining unit employees to report their time into the “Deltec” system

a. The facts

Complaint paragraph 6(c) alleges that in January 2014, Respondent promulgated a new work rule requiring bargaining unit employees to report their time into the “Deltec” system.

Respondent requires bargaining unit employees to enter their hours worked into a timekeeping system called “Deltec.” If an employee fails to enter their time into the Deltec system, it is called a “floor failure.”

At the time Respondent hired its bargaining unit employees, as part of its new employee training, it made a power point presentation.<sup>29</sup> Included in the training materials was a section on recording time on time sheets. The training<sup>30</sup> provided:

<sup>29</sup> GC Exh. 79.

<sup>30</sup> Id. at p. 28.

## Timesheets

- 5                   • Recording time worked on your timesheet at the end of each work day is mandatory.
- Any overtime hours needed, must be pre-approved by your authorized
- Program Manager in writing, prior to such time being worked.
- 10               • All employees are subject to floor checks at any time.
- Employees are required to communicate with his/her Lead Staff Member, Supervisor or Program Manager to ensure proper communication of such requests to deviate from a regular schedule in advance.
- 15               • It is also imperative to note the following:  
Employees are independently responsible for correctly charging their time.  
There are penalties for contributing to a false claim or false statement against the government.

20               In addition employees were required to take an online training course<sup>31</sup> on use of Respondent's time keeping system. Both drivers Ausley and Davis took this online course.<sup>32</sup>

25               Respondent's employee handbook<sup>33</sup> provides at page 2:

3.5 Maintaining Accurate Records

30               Proper timesheet reporting is one of the most important requirements of federal government contracting - a requirement which SRI fully supports. Timesheets are used, among other reasons, to control the allocation of costs between fixed-price contracts and cost-reimbursement contracts, to record hours worked for contract invoicing purposes, and to allocate costs between direct and indirect cost centers. To comply fully with the timesheet requirement, employees record the actual number of hours worked in a day. It is important that all employees recognize the importance of recording actual number of

35               hours worked.

40               It is also imperative to note the following:

                  Employees are independently responsible for charging their time correctly.  
                  There are potential penalties for contributing to a false claim or false statement against the government.

45               Respondent's employee handbook also has a provision dealing with employee conduct and discipline.<sup>34</sup> This provision provides in part:

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<sup>31</sup> Id. at pp. 45–55.

<sup>32</sup> R. Exh. 9.

<sup>33</sup> GC Exh. 78.

<sup>34</sup> Id. at p. 2.



#### 4. Code of Business Ethics & Conduct

....

There is both a management and an individual obligation to fulfill the intent of this policy. Any clear infraction of applicable laws or prevailing business ethics will subject an employee to disciplinary action which may include reprimand, probation, suspension, reduction in salary, demotion, or dismissal depending on the seriousness of the offense. Such offenses or violations of conduct would include, but not be limited to:

[f]alsifying company records including application for employment.

....

not following policies and procedures.

During Respondent's first few months of operations at JBLM, no bargaining unit employees were disciplined for failing to enter their hours in a timely manner, nor is there evidence that Respondent tolerated bargaining unit employees' failure to record their hours. According to Ausley, in September 2011, Cox posted an email on the motor pool bulletin board, telling employees that if they did not report their hours they would be subject to reprimand depending upon the nature of the excuse.<sup>35</sup>

#### b. The analysis

The Board has long held that disciplinary policies and work rules are mandatory subjects of bargaining. *Toledo Blade Co.*, 343 NLRB 385, 387 (2004). Moreover, if discipline was issued based on a unilaterally imposed rule, that discipline also violates Section 8(a)(5). *Consec Security*, 328 NLRB 1201, 1201 (1999).

Counsel for the General Counsel relies on *El Paso Electric Co.*, 355 NLRB 428, 453 (2010), where the Board affirmed the administrative law judge who found that a more stringent enforcement of absentee and tardy rules violated Section 8(a)(5) of the Act where there was no record of probation or discipline previously issued to an employee who was excessively absent or late. It was concluded that this amounted to a significant, material, and substantial change to employees' working conditions. By failing to notify or bargain with the Union before implementing this change the employer was found to have violated Section 8(a)(5) of the Act.

Here, General Counsel argues that Respondent violated Section 8(a)(5) of the Act by imposing a new disciplinary system for floor failures, which had not been previously subject to discipline, arguing that when Respondent initially began its operations at JBLM, bargaining unit employees were not subject to discipline if they failed to input their hours into the Deltek system at the end of the day, as required.

The record fails to support this contention. Clearly from the inception of its operations at JBLM Respondent's employee handbook and its training materials have provided that if employees fail to follow policy and procedure, including record keeping, they may be subject to discipline. Unlike the situation in *El Paso Electric*, supra, here there is no evidence that

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<sup>35</sup> Tr.t 67, LL. 16–23.

Respondent has had prior occasion to discipline its employees for failing to record their time. Likewise, there is no evidence that Respondent has been lax in enforcing its disciplinary procedure for failing to follow policy. It was not until September 2011 that Respondent discovered that employees were not recording their time in the Deltec time system in a timely manner and it took disciplinary action, requiring employees to write an excuse letter explaining their “floor failure” in failing to enter their time.

I conclude that there is evidence that Respondent has always had an employee disciplinary procedure for failure to follow its policies and that all employees knew or should have known that they were obligated to enter their time on a daily basis into the Deltec system. Accordingly I find no evidence that Respondent implemented a new work rule requiring employees to enter their time daily into its Deltec system. I will recommend that this allegation be dismissed.

#### 4. Enforcement of the new work rule against Ausley

##### a. The facts

Complaint paragraph 6(f) alleges that on January 26, 2012, Respondent enforced the new work rule against Ausley.

In about November 2011, Ausley did not make an entry into the Deltec system reflecting 0 hours worked, since she had no hours for that day. The following day Coon called Ausley at home and told her she had a floor failure and that she had to write a statement about what her excuse for the floor failure was. Coon then said she would let Ausley know what the repercussions would be for her floor failure. Ausley wrote the statement, but she heard nothing further from Respondent.

##### b. The analysis

Having found that Respondent did not implement a new work rule or disciplinary policy in requiring employees to enter their time into the Deltec system on a daily basis but rather pursuant to extant policy had both a disciplinary rule and a policy requiring employees to enter their time into Deltec, requiring Ausley to write the letter explaining why she failed to enter her time into Deltec did not violate Section 8(a)(5) of the Act. I will recommend this allegation be dismissed.

#### C. The Union’s Information Requests

General Counsel alleges in complaint paragraphs 7(a) through (i) Respondent violated Section 8(a)(5) of the Act by refusing to furnish or by unreasonably delaying in furnishing the Union with information that it requested between January 24, 2012, and May 2, 2013, that was necessary and relevant for the Union in performing its duties as exclusive collective-bargaining representative over bargaining unit employees’ terms and conditions of employment.

## 1. The facts

Complaint paragraph 7(a) alleges that on January 24, 2012, the Union in writing requested Respondent to furnish information.

On January 24, 2012, the Union made an information request<sup>36</sup> to Respondent for the purposes of engaging in collective bargaining. The request included:

1. Provide information regarding SRI procedures and policies for making work assignments.

a. Provide names and titles of personnel authorized to make offers of assignments.

b. Detail the procedure for contacting the employee, time limits for responding.

c. Provide information on any situation(s) where an employee has stated unavailability for an assignment.

d. Provide information on any action taken by the Company to discipline an employee in any manner—including but not limited to verbal counseling—bypass on subsequent work assignments, written warnings, etc. Provide details of company policy/procedure related to assigning work to personnel who have previously requested vacation, or other time off.

2. Provide details of situations where workers had their vacations revoked after they had previously been approved, include names, dates and workforce records (payroll and/or otherwise) that would show availability of other drivers that would have been able to provide coverage if called.

b. Provide information as to the procedures for approving vacations, include the names and titles of authorized personnel.

c. Provide information as to the procedures for revoking previous approval of vacation.

i. Give details of attempts that SRI has made to find other available workers to cover the mission, prior to revoking the vacation approval.

3. Detail any policies designed to evenly distribute the work load amongst eligible employees

4. Provide a detailed explanation of the pre-trip maintenance and post-trip maintenance survey procedures for vehicles assigned to drivers.

a. Provide forms drivers are required to fill out.

b. Provide details of policies or procedures that drivers are to follow if vehicle does not pass the survey due to safety or other issues.

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<sup>36</sup> GC Exh. 14.

c. Provide names and titles of personnel the drivers are to contact to report the results of the pre/post evaluation of vehicle.

d. Provide details and forms for procedures required by SRI for dryers to change vehicles for the mission.

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5. Provide details of instances when all drivers were assigned to missions at the same time (we do not need sensitive details of particular mission). We do request the dates, number of drivers involved, duration of assignments, and work logs to ascertain the amount of work done.

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6. Provide information on procedures for posting the schedule of assignments, and when the procedure went into effect.

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7. Provide details of all safety equipment that SRI requires of workers in the bargaining unit.

a. Who is responsible for purchasing, distributing and caring for the safety equipment.

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b. Who is responsible for determining the correctness of the safety equipment provided.

c. What is the procedure for requesting the provided safety equipment.

d. What is the procedure for requesting safety equipment that is not provided—such as making a suggestion for additional/different safety equipment.

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8. Provide details of dress code that SRI requires of bargaining unit personnel. Who is responsible for purchasing, distributing and caring for the required dress.[?]

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9. Provide information on any rain or cold weather gear required.

10. Provide explanation as to the relationship between SRI and SAIC personnel.

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11. Provide detailed information on procedures for reporting safety concerns, other than related to the vehicle.

a. Provide names and titles of contact personnel.

b. Provide forms required.

c. Provide details of the response procedures.

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d. Provide steps available to employee if the safety issue is not addressed to the satisfaction of the concerned employee.

12. Provide details of any training that SRI requires of employees.

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a. Provide details of any training that SRI provides to employees

13. Provide minutes of all safety committee meetings since SRI became the contractor.

a. Provide names and titles of personnel assigned to the committee, and how long they have served on the committee(s).

b. Detail how the committee members were chosen.

c. Who is the head of the committee?

d. Provide any charter or operating guidelines/mission for the committee.

e. Provide details of any training given to committee members.

f. Are committee members paid for time spent performing their duties? Explain.

g. What is the level of responsibility/authority of the committee as a whole.

h. What is the level of responsibility and authority of the individual members serving on it, provide details for each individual.

i. What is the duration of the members assignment to the safety committee.

j. Provide details of any other committees, regular or other, that are currently in place, or have been in place since Jan 2011.

14. Provide details for how SRI personnel, other than those regularly assigned to the worksite, obtain access to the facilities.

15. Provide information on all instances of drug or alcohol abuse within the bargaining unit that SRI is aware of since becoming the contractor.

16. Provide all materials and information shared at the New Hire Orientation.

a. Has this information changed since the first orientation that SRI conducted in January of 2011?

b. Provide copies of any forms or releases that new hires are required to fill out during this orientation, or as a result of this orientation.

c. Provide a current Employee handbook; and any previous versions of the handbook that has applied since SRI first won the contract in January 2011.

d. Provide any materials provided to employees at orientation or on first day of work.

e. Provide a copy of all documentation employees receive that outlines SRI policies and procedures.

f. Provide a detailed outline of the [current] avenue for employee grievance, concern or suggestion for improvement.

17. Provide a list of all conditions and classifications that are subject to random drug testing.

a. Provide method for choosing personnel who are picked for random testing.

b. Provide names of personnel who have been directed to undergo drug/alcohol testing since SRI has been administrator of the service contract.

18. Provide a list of all certifications and licenses that are required of any or all bargaining unit personnel.

a. Provide information as to who is responsible for the testing of represented personnel for work proficiency, include their title and contact information.

b. Provide details as to testing for proficiency, or for certification, that represented employees are required to take, provide copies of any testing materials.

c. Provide a list of all employees, showing all licenses, permits, stamps, or endorsements they currently have.

d. Provide a demographic breakdown of all employees in the bargaining unit by age, gender, and ethnic categories.

19. Provide a list of all equipment that represented personnel are responsible for driving.

a. Provide a matrix that lists the type of vehicle (make, model, .type) and also provides the names of represented personnel authorized to operate them.

b. Provide a list of duties—such—as maintenance, record keeping, cleaning, etc. —that represented employees are required to perform, by vehicle make/model/type.

c. Provide documentation provided to employees that details the list of duties they are required to perform for each mission—such as pre ! post inspection, any maintenance, hook-up or tear-down, etc.

20. Provide information on the process, including a copy of any documentation required, for personnel to report an issue with an assigned vehicle.

a. Who (name and title) is responsible for the vehicle assignments, and for determining any subsequent change of vehicle.

21. Provide information on the process for reporting any event or situation (accident, personnel issue, equipment malfunction, mission irregularity, etc.) and gaining guidance or approval as necessary.

22. Provide information to current sick leave policy.

a. Detail the information required of a doctors excuse letter.

b. Provide a list of all instances where an employee has called in sick since January 2011

c. Provide a list of all instances where SRI has required a note from the employee's doctor.

d. Provide a list of all instances where SRI has rejected the doctor's note, o1" required that employee return to the doctor and obtain a different version of the note.

23. Provide a completed employee handbook, and any materials provided to employees at orientation or on first day of work. Provide a copy of all documentation employees receive that outlines SRI policies and procedures.

24. Provide names and titles of all personnel assigned to JBLM who have authority to give work assignments to represented personnel.

a. Provide names and titles of all personnel assigned to JBLM who have the authority to discipline, represented personnel.

b. Provide names and titles of all personnel assigned to JBLM who have the authority to authorize represented personnel to work, or to cancel previously authorized work assignments.

25. Provide detailed documentation for any and all benefits that may be eligible to any or all SRI employees assigned to JBLM.

a. Provide summary plan benefits documentation for any 401K, pension, medical or other benefit.

b. Provide name and contact information of the benefit providers.

c. Provide name, title and contact information for on-site personnel responsible for administering the benefits—or providing information to the personnel assigned to JBLM.

26. Provide information on facilities available to personnel while on assignment, or during time between missions.

a. Provide procedures for employees to take breaks, or use restrooms while on assignments.

27. Provide policies and directions given to employees on availability requirements they will be held to—such as, are they on twenty-four (24) hour call, three-hundred-sixty-five (365) days each year.

a. Provide any documentation provided to employees outlining this responsibility.

b. Provide information on any discipline, or threat of discipline, that has been relayed to employees for a violation of this requirement.

28. Provide a list of all discipline administered, or threatened, to bargaining unit personnel since January 2011.

On February 1, 2014<sup>37</sup>, Respondent replied to the union's information request without providing any information. Respondent's response sought clarification of the Union's request:

Dear Mr. Cummings:

I write to preliminarily respond to the lengthy information request transmitted by email on January 24, 2012. SRI has started work on compiling the information you request. As we began that process, however, many questions arose with respect to the request. I write to request clarification on your request and to provide you with a preliminary estimated response date. I write to request clarification on your request and to provide you with a preliminary estimated response date.

First, on their face, your requests appear to seek information about all SRI employees and all SRI operations which would exceed the proper scope for these requests. I note that some requests, including numbers 15, 18, 19 and 28 are specifically limited to bargaining unit employees at IBLM. The other requests are not so limited. This suggests that the union is, in the other requests, seeking information about all SRI operators and all SRI employees. Are the union's other requests intended to seek information about all SRI operations and all SRI employees? Are those requests instead limited to bargaining unit employees at JBLM? Please clarify the scope of your requests at your earliest convenience.

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<sup>37</sup> GC Exh. 16.

Second, independent of the above issue, several requests do not appear to involve bargaining unit employees at JBLM. For example, request 14 appears to seek information for non-bargaining unit employees. Much of the information requested in request 16 pertains to applicants and communications before an applicant becomes an SRI employee. Similarly, some orientation materials are communicated before the individual becomes an employee. Given that the union does not represent applicants, we are unclear as to the basis for a request about applicants. In request 12, we are unclear whether the "training" the union is requesting is limited to the training provided to bargaining unit employees or is broader. We are unclear how request 10 relates to any issue affecting bargaining unit employees. Please clarify how these requests pertain to bargaining unit employees.

Several of the information requests are themselves internally unclear. Request 14 uses the terms "facilities." By this term, do you mean to include SRI's work locations on JBLM, the JBLM base, the locations to which bargaining unit employees drive or some combination of the above? Request 4 uses the term "survey." By this term, do you mean to reference the pre- and post-trip inspections or something else? In request 5, we are unclear what you mean by "assigned to missions at the same—time." Do you mean literally an assignment at the same moment in time, do you mean a situation where two bargaining unit employees were assigned to the same mission or something else? Request 7 references "safety equipment." Did you intend to reference personal protective equipment or the broader scope of safety items at the workplace? In request 20, you reference "an issue with an assigned vehicle." Previous requests specifically address safety concerns, including request 11. Is request 20 duplicative of request 11 or are you requesting some other information? Please clarify these points.

As I explained in the last bargaining session, I had vacation scheduled for January 27th and 30th and was away from the office during those times. Nevertheless, I forwarded your request to other SRI personnel to obtain an estimate of the time required to respond to your request. SRI estimates that in excess of 100 hours of dedicated staff time would be required to respond to your requests, even assuming that your requests are limited to bargaining unit employees at JBLM. Given these time estimates and other business commitments, we anticipate that an initial response will not be available until February 23rd or later.

I note that we have negotiations scheduled for February 7 and 8. I am prepared to use the time allotted for negotiations to work on your information request if that is the union's preference. Please let me know your preference in that regard.

On February 2, 2012<sup>38</sup>, the Union responded to Respondent's request for clarification. The Union responses appear in bold:

First, on their face, your requests appear to seek information about all SRI employees and all SRI operations which would exceed the proper scope for these requests. I note that some requests, including numbers 15, 18, 19 and 28 are specifically limited to bargaining

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<sup>38</sup> GC Exh. 17.



unit employees at JBLM. The other requests are not so limited. This suggests that the union is, in the other requests, seeking information about all SRI operations and all SRI employees. Are the union's other requests intended to seek information about all SRI operations and all SRI employees? Are those requests instead limited to bargaining unit employees at JBLM? Please clarify the scope of your requests at your earliest convenience.

**The IAM is seeking information as worded in the request. The information directly pointed to bargaining unit personnel is intentional, the wider information is intentional as well. The need for such information is to ascertain any retaliation against IAM represented employees due to their decision to elect us as their bargaining representative. Also, we need to understand any unilateral changes to working conditions that have been made in violation of your duty to bargain over changes to conditions. In addition, the capability and action by SRI to provide any benefit or other condition of employment may provide the IAM with information pertinent to a proposal or counter. If conditions are already being provided to employees at JBLM, it could help to speed the process and allow us to better identify areas of agreement.**

Second, independent of the above issue, several requests do not appear to involve bargaining unit employees at JBLM. For example, request 14 appears to seek information for non-bargaining unit employees.

**It appears that SRI is attempting to avoid answering the request for information. Item 14 is related to access. We have had several discussions with SRI regarding access to the working location of our members, and SRI has maintained that they have no ability to help. Please provide the information as requested.**

Much of the information requested in request 16 pertains to applicants and communications before an applicant becomes an SRI employee. Similarly, some orientation materials are communicated before the individual becomes an employee. Given that the union does not represent applicants, we are unclear as to the basis for a request about applicants.

**Item 16 is pertinent to our negotiations. The Company has hired many employees since being formally awarded the contract, and we need to know the information provided to them as they come in. This information allows us to understand the working conditions that employees are expected to operate under, and we need to keep track of any changes that SRI may be making in violation of their duty to bargain over such changes.**

In request 12, we are unclear whether the "training" the union is requesting is limited to the training provided to bargaining unit employees or is broader.

**Item 12 is for all training provided to SRI employees at JBLM. Again, this is to allow the IAM to understand any retaliation or denial of opportunity that impacts our members because of their decision to reach out to the IAM. It also allows us to**

**know what capabilities that SRI has, so that we can determine if a proposal for inclusion might be proper.**

5 We are unclear how request 10 relates to any issue affecting bargaining unit employees. Please clarify how these requests pertain to bargaining unit employees.

10 **Item 10 is critical to our duty of representation of workers performing work as outlined by the NLRB. Represented employees were moved into SAIC after the NLRB certified the election of the IAM, and recently SRI moved employees out of SAIL: back into the bargaining unit. This relationship needs to be clarified, and we ask that you properly provide the information.**

15 Several of the information requests are themselves internally unclear. Request 14 uses the terms “facilities.” By this term, do you mean to include SRI’s work locations on JBLM, the JBLM base, the locations to which bargaining unit employees drive or some combination of the above?

20 **"Facilities" refers to the locations where our members are gathered. Examples would be the area where they are dispatched from, the "yard" where they pick up their vehicles, or any other place they regularly congregate. This does not refer to individual mission locations. The issue is access to JBLM, as you have been advised on numerous occasions.**

25 Request 4 uses the term “survey.” By this term, do you mean to reference the pre- and post-trip inspections or something else?

30 **Please read sections "a, b, c and d" of our info request.**

35 In request 5, we are unclear what you mean by “assigned to missions at the same time.” Do you mean literally an assignment at the same moment in time, do you mean a situation where two bargaining unit employees were assigned to the same mission or something else?

40 **We are requesting information on your assertion that the hiring of drivers, when current drivers are not working forty hours per week, was necessary because of times when all drivers are required at the same time.**

Request 7 references “safety equipment.” Did you intend to reference personal protective equipment or the broader scope of safety items at the workplace?

45 **The IAM is requesting information on “all safety equipment” —this would be easier if you just read the request.**

In request 20, you reference “an issue with an assigned vehicle.” Previous requests specifically address safety concerns, including request 11. Is request 20 duplicative of request 11 or are you requesting some other information? Please clarify these points.

**If SRI would actually read the info request, it would see that item 11 specifically states "procedures for reporting safety concerns, other than related to the vehicle", and item 20 specifically pertaining to reporting an "issue with an assigned vehicle."**

5 As I explained in the last bargaining session, I had vacation scheduled for January 27th and 30th and was away from the office during those times. Nevertheless, I forwarded  
10 your request to other SRI personnel to obtain an estimate of the time required to respond to your request. SRI estimates that in excess of 100 hours of dedicated stafftime would be required to respond to your requests, even assuming that your requests are limited to bargaining unit employees at JBLM. Given these time estimates and other business commitments, we anticipate that an initial response will not be available until February 23rd or later.

15 **The amount of time to provide this information may, or may not, be accurate. The IAM had repeatedly tried to schedule negotiations, to move the process forward. As SRI has been unwilling to meet regularly and hold discussion leading to an agreement the information request is our only avenue for obtaining the pertinent information we need. We believe since the information is contained in SRI files, the response should take no later than the end of next week if you try to cooperate.**

20 I note that we have negotiations scheduled for February 7 and 8. I am prepared to use the time allotted for negotiations to work on your information request if that is the union's preference. Please let me know your preference in that regard.

25 **The information request was not sent in an attempt to negotiate OR provide the information—we expect SRI to continue to meet its obligations to negotiate AND to provide information that is necessary for the IAM to properly build proposals and respond to issues and proposals raised by the Company. I would expect that the "other SRI personnel" you already contacted can work on the information as you meet and negotiate with us.**

30 On February 28, 2012, Martin, Respondent's attorney replied<sup>39</sup> to the Union's explanatory email of February 2, 2012. Respondent's February 28 response was non responsive to and/or refused to provide information in response to the Union's January 24, 2012 request numbers 1(a)-(d), 2(c), 4(a), (c) and (d), 5, 6, 7(a), 9, 11(b)-(d), 12, 13(g and (j)), 14, 16(a)-(f), 17(a), 18(b)-(d), 19(a)-(c), 22(b) and (c), 23, 26 (a)-(c), 28 and 29.

35 Complaint allegation 7(b) alleges that on about February 21, 2012, the Union requested in writing that Respondent furnish the following information.

40 In a February 21, 2012 letter<sup>40</sup> the Union sought additional information from Respondent:

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<sup>39</sup> GC Exh. 18.

<sup>40</sup> GC Exh. 23.

Ms. Lawson,

In order to properly prepare proposals, and respond to proposals from your negotiating committee, the IAM is requesting the following information. We appreciate your cooperation with this request, and would like the reply by March 2, 2012.

1. Provide a list of all SRI policies, practices, requirements, or duties that have been communicated to employees represented by the IAM since April 20: Include any and all policies that were changed from predecessor contractor, as well as policies that were continued by SRI.

a. Provide copies of the communications provided to IAM represented employees.  
b. Provide dates that the SRI policies, practices, requirements and/or duties were communicated.

c. Provide name and title of person who was responsible for delivering the communication and what method was used.

d. Provide dates when such policies, practices, requirements and/or duties were to commence.

e. Provide copies of all communication whereby SRI informed the IAM of policies, practices, requirements and/or duties.

f. Provide details of any and all discipline, counseling and/or warnings issued to IAM represented employees since April 2011.

g. Provide a list of all policies, practices, requirements and/or duties that have been changed since April 2011 for any and all personnel employed by Sri at Joint-Base Lewis McChord.

2. Provide details of all communication between SRI and Joint-Base Lewis McChord, with regard to safety issue raised by the IAM in November 2011.

a. Provide a detailed description of steps to remedy the safety concern raised

b. Provide name, title, and responsibility of SRI personnel responsible for addressing the safety concern.

On March 20, 2012, Respondent replied by email<sup>41</sup> to the Union's February 21, 2012 information request. The response covered only request item 1(f).

Complaint allegation 7(c) alleges that on February 28, 2012, the Union requested in writing the information set forth below.

On February 28, 2012, the Union made an information request <sup>42</sup>of Respondent asking for:

[A]n updated list of employees in the bargaining unit, it appears there have been several changes. Please provide the same information and format as last time with the addition of

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<sup>41</sup> GC Exh. 25.

<sup>42</sup> GC Exh. 26.

City and Email Address. In addition, we would like a breakdown of each employees certification / license levels that are pertinent to assignments at SRI.

We are also requesting a breakdown of missions that SRI has been asked to perform over the last six (6) months. This data is to include the mission duration (number of hours charged), level of driver certification/license required, and which driver was assigned the mission.

We are trying to get a handle on scheduling so that we can get an idea on exactly what driver utilization is. In order to bargain intelligently on this we need the Company to provide Time Card/Assignment Data for the last six (6)months. Please provide Dispatch Logs with an annotation of expected vs. actual mission/assignment time logged by driver as well as time card data for the same period for each employee in the bargaining unit.

SRI has recently begun using the company email system to communicate to workers we represent regarding issues related to negotiations. We are requesting the list of SRI email addresses for employees in the bargaining unit, so that we may have the same opportunity, and it would remedy the issue of some employees not having home email.

Complaint allegation 8(d) alleges that on March 13, 2012, the Union requested in writing the following information of Respondent.

On March 13, 2012, the Union made an additional information request<sup>43</sup> asking for:

[T]he full Statement of Work that encompasses the description of duties that SRI has contracted with the government, under, Service Contract # W9 I24D-I 1-C-900&

Provide copies of all Deltek records, Payroll records, time cards, and any other records: or accounting documentation that shows time charged, or compensation: paid to any employee under this Service Contract.

On March 20, 2012, Respondent replied<sup>44</sup> to the Union information request of March 13 and refused to provide any of the information

We've received your request dated March 13th. In looking at the information you are requesting to include, "Deltek records, payroll records, time cards and other records or accounting documentation...", your request is overly broad and unduly burdensome as it appears you are requesting a year's worth of time and payroll records for all employees of SRI working on the JBLM contract. Please narrow your request appropriately and identify the reasons you need these records. Once you have done so, we will re-evaluate your request and respond appropriately.

As alleged in complaint paragraph 7(e), on March 15, 2012, the Union renewed<sup>45</sup> its January 24, 2012 information request.

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<sup>43</sup> GC Exh. 27.

<sup>44</sup> GC Exh. 28.

On March 21, 2012, Respondent provided the Union with the drivers licenses<sup>46</sup> of bargaining unit employees, its dress<sup>47</sup> and drug policies.<sup>48</sup> Prior to January 30, 2013, Respondent provided no other information to the Union.

Complaint paragraph 7(f) alleges that on February 26, 2013, the Union made another written information request of Respondent.

On February 26, 2013, the Union sent Respondent a letter<sup>49</sup> requesting that Respondent rescind the unilateral changes addressed by the settlement agreement. The Union also requested the following information:

We are further requesting a complete explanation of a “floor failure.”

We also are requesting complete payroll and mission records for each employee who was on a mission to the THA, and was impacted by SRI’s decision to have them return prior to “wheels up.” The IAM is willing to accept documented and verifiable proof that employees have already been paid for the wages lost due to this decision—and documentation that verifies the payments were for the proper amount to each employee.

The IAM is requesting a detailed outline of all holiday hours paid to represented employees over the past eighteen months. We further request proof that the employees have been fully and properly compensated for the change in holiday pay calculation that changed their accrual from a standard 8 hours to a pro-rated amount. Provide details of how much was paid to each employee, and show details as to how that amount was calculated. . . .

Please provide an explanation and any information on:

[A]ny changes that have impacted working conditions of represented employees in the past six months.

SRI’s new practice of hiring temporary employees and advising them that they will not be protected by the terms of the settlement agreement.

- Provide all payroll records and mission assignments for the previous six months on all SRI drivers and dispatchers that have performed work requiring troop or equipment transport that has historically been done by represented drivers and dispatchers.

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<sup>45</sup> GC Exh. 29.

<sup>46</sup> GC Exh.20

<sup>47</sup> GC Exh. 21.

<sup>48</sup> GC Exh. 22.

<sup>49</sup> GC Exh. 30.

- Provide explanation, details and records of any and all instances where drivers outside the bargaining unit have been used to supplement the available pool of represented drivers.

5           The IAM is also requesting copies of all postings and communications with employees with regard to the settlement of the NLRB charges. Please include all documentation and proof of SRI's assertion that charges filed by the IAM were based upon insignificant actions such as the relocation of a desk as has communicated to employees.

10           The IAM further requests a complete list of all employees of SRI that are performing any work that the IAM is properly certified to represent. Provide names, contact information, classification of driver's license held, and a demographic breakdown as to race, age, gender and the number of hours that each has worked over the past six months.

15           On March 8, 2013, Respondent's third attorney, Mark Hutchinson, replied<sup>50</sup> to the Union's February 26, 2013 request for information. Other than explaining what constitutes a "floor failure" and stating there were no changes in employees terms and conditions of employment that had not been communicated to the Union, no information was provided. With regard to payroll and other records for union-represented employees, Respondent indicated that it was processing the requests and would respond soon.

20           On March 15, 2013, Respondent provided further response<sup>51</sup> to the Union's February 26 information request. Hutchinson denied employees lost any wages, explained how holiday pay was calculated, and enclosed a roster of bargaining unit employees without driver's license classification, race, age gender, and the number of hours worked as had been requested.

25           As the record failed to establish that on March 25, 2013, the Union verbally requested the information set forth in paragraph 7(g) of the complaint, counsel for the General Counsel withdrew that allegation.

30           Complaint paragraph 7(h) alleges that on April 22, 2013, the Union made a written information request of Respondent for additional information.

35           Again on April 22, 2013 the Union made yet another request<sup>52</sup> of Respondent for the following information:

40           It has come to our attention that SRI has informed represented workers of an opening for a new classification. As you know this is a mandatory subject of bargaining, and we are prepared to enter into discussions over the duties and rates of pay for the classification - if it is determined that it is needed. The classification that employees have been contacted about is called "Vehicle Cleaner, SCA classification number 11030". The IAM is very interested in discussing it with you.

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<sup>50</sup> GC Exh. 31.

<sup>51</sup> GC Exh. 32.

<sup>52</sup> GC Exh. 33.

In the interim, please provide the following information, so that we can properly discuss this issue:

1. A complete and detailed outline of duties for this classification as SRI proposes to administer it
2. A complete and detailed listing of all qualifications, licenses, training and/or experience required of applicants for the position, or that will be addressed upon the selection of the successful candidate(s)
3. Listing of any duties that are different from those required of the driver's who have historically performed this set of duties
4. Proposed classification wage and benefit structure
5. All criteria that SRI will use to determine the successful candidate or candidates
6. All information that led to SRI's decision that an additional Classification is warranted for the bargaining unit work

Finally, as alleged in paragraph 7(i) of the complaint, on May 2, 2013, the Union renewed all of its requests for information.<sup>53</sup> The record is devoid of any evidence suggesting that Respondent ever replied to the Union's May 2 letter, let alone ever provided any of the information rerequested therein (Tr. 183).

To date Respondent has failed to provide the Union with the following information:

From the Union's January 24, 2012, request:

SRI procedures and policies for making work assignments, names and titles of personnel authorized to make offers of assignments, procedure for contracting the employee, time limits for responding, information on any situation(s) where an employee has stated unavailability for an assignment, information on any action taken by the Company to discipline an employee in any manner—including but not limited to verbal counseling, bypass on subsequent work assignments, written warnings, etc., company policy/procedure related to assigning work to personnel who have previously requested vacation, or other time off, information as to the procedures for approving vacations, include the names and titles of authorized personnel, policies designed to evenly distribute the work load amongst eligible employees, pre-trip maintenance and post-trip maintenance survey procedures for vehicles assigned to drivers, forms drivers are required to fill out, names and titles of personnel the drivers are to contact to report the results of the pre/post evaluation of vehicle, instances when all drivers were assigned to missions at the same time, the dates, number of drivers involved, duration of assignments, and work logs to ascertain the amount of work done, procedures for posting

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<sup>53</sup> GC Exh. 34.



the schedule of assignments, and when the procedure went into effect, who is responsible for purchasing, distributing, and caring for the safety equipment, information on any rain or cold weather gear provided, the relationship between SRI and SAIC personnel, forms required and details of response procedures for reporting safety concerns, other than related to the vehicle, training that SRI requires of employees, any training that SRI provides to employees, minutes of all safety committee meetings since SRI became the contractor, names and titles of personnel assigned to the committee, and how long they have served on the committee(s), any training given to committee members, the level of responsibility and authority of the individual members serving on it, any other committees, regular or other, that are currently in place, or have been in place since January 2011, how SRI personnel, other than those regularly assigned to the worksite, obtain access to the facilities, materials and information shared at the New Hire Orientation, has this information changed since the first orientation that SRI conducted in January 2011, copies of any forms or releases that new hires are required to fill out during this orientation, or as a result of this orientation, a current employee handbook, and any previous versions of the handbook that has applied since SRI first won the contract in January 2011, any materials provided to employees at orientation or on the first day of work, a copy of all documentation employees receive that outlines SRI policies and procedures, a list of all conditions and classifications that are subject to random drug testing, list of all certifications and licenses that are required of any or all bargaining Unit personnel, who is responsible for the testing of represented personnel for work proficiency, include their title and contact information, details as to testing for proficiency, or for certification, that represented employees are required to take, provide copies of any testing materials, a list of all employees, showing all licenses, permits, stamps, or endorsements they currently have, a demographic breakdown of all employees in the bargaining unit by age, gender, and ethnic categories, a list of all equipment that represented personnel are responsible for driving, a matrix that lists the type of vehicle (make, model, type) and also provide the names of represented personnel authorized to operate them a list of duties—such as maintenance, record keeping, cleaning, etc.—that represented employees are required to perform, by vehicle make / model / type, documentation provided to employees that details the list of duties they are required to perform for each missions—such as pre /post inspection, any maintenance, hook-up or tear-down, etc., information on the process for reporting any event or situation (personnel issue, equipment malfunction, mission irregularity, etc.) and gaining guidance or approval if necessary, information to the current sick leave policy, the information required of a doctors excuse letter, a list of all instances where an employee has called in sick since January 2011, a list of all instances where SRI has required a note from the employee's doctor, a complete employee handbook, and any materials provided to employees at orientation or on the first day of work, a copy of all documentation employees receive that outlines SRI policies and procedures, documentation for any and all benefits that may be eligible to any or all SRI employees assigned to JBLM, summary plan benefits documentation for any 401K, pension, medical, or other benefit, name and contact information for the benefit providers, contact information for on-site personnel responsible for administering the benefits—or providing information to the personnel assigned to JBLM, information on facilities available to personnel while on assignment, or during time between missions, procedures for employees to take breaks or use restrooms while on assignments, policies and directions given to employees on availability requirements they will be held to—such as, they are on twenty-four (24) hour

call, three-hundred-six-five (365) days each year, any documentation provided to employees outlining this responsibility, information on any discipline, or threat of discipline, that has been relayed to employees for a violation of this requirement, a list of all discipline administered, or threatened, to bargaining unit personnel since January 2011.

*From the Union's January 24, 2012 request, as explained and/or clarified in its March 15, 2012, letter:*

Details of dress code that SRI requires of bargaining Unit personnel, details of policies or procedures that drivers are to follow if vehicle does not pass the survey due to safety or other issues, details and forms for procedures required by SRI for drivers to change vehicles for the mission, details of all safety equipment that SRI requires of workers in the bargaining Unit, the procedure for requesting the provided safety equipment, how the Safety committee members were chosen, Who is the head of the Safety committee, any charter or operating guidelines/mission for the Safety committee, Are committee member paid for time spent performing their duties, the level of responsibility/authority of the committee as a whole, the duration of the members assignment to the safety committee, information on all instances of drug or alcohol abuse within the bargaining unit that SRI is aware of since become the contractor, a detailed outline of the current avenue for employee grievances, concerns, or suggestions for improvement, the method for choosing personnel who are picked to do random drug testing, names of personnel who have been direct to undergo drug/alcohol testing since SRI has been administrator of the service contract, the process, including a copy of any documentation required, for personnel to report an issue with an assigned vehicle, (name and title) responsible for the vehicle assignments, and for determining any subsequent change of vehicle, the process for reporting any event or situation (accident) and gaining guidance or approval if necessary, a list of all instances where SRI has rejected the doctor's note, or required that the employee return to the doctor and obtain a different version of the note, names and titles of all personnel assigned to JBLM who have authority to give work assignments to represented personnel, names and titles of all personnel assigned to JBLM who have the authority to discipline represented personnel, names and titles of all personnel assigned to JBLM who have the authority to authorize represented personnel to work, or to cancel previously authorized work assignments, name and title for on-site personnel responsible for administering the benefits—or providing information to the personnel assigned to JBLM.

*From the Union's February 21, 2012, request:*

A list of all SRI policies, practices, requirements, or duties that have been communicated to employees represented by the IAM since April 2011, any and all policies that were changed from the predecessor contractor, as well as policies that were continued by SRI, copies of the communications provided to IAM represented employees, dates that the SRI policies, practices, requirements and/or duties were communicated, the name and title of the person who was responsible for delivering the communication and what method was used, dates when such policies, practices, requirements and/or duties were to commence, copies of all communication whereby SRI informed the IAM of policies, practices, requirements and/or duties, a list of all policies, practices, requirements and/or duties that

have been changed since April 2011 for any and all personnel employed by SRI at JBLM, all communication between SRI and JBLM, with regard to safety issues raised by the IAM in November 2011, a detailed description of steps to remedy the safety concern raised, the name, title, and responsibility of SRI personnel responsible for addressing the safety concern.

From the Union's February 28, 2012 request:

A breakdown of each employee's certification / license levels that are pertinent to assignments at SRI, a breakdown of missions that SRI has been asked to perform over the last six months to include the mission duration (number of hours charged), level of driver certification/license required, and which driver was assigned the missions, time card / assignment data for the last six months, dispatch logs with an annotation of expected versus actual missions/assignment time logged by driver as well as time card data for the same period for each employee in the bargaining unit.

From the Union's March 13, 2012, request:

Full Statement of Work that encompasses the description of duties that SRI has contracted with the government, under Service Contract #W9124D-11-C-900, copies of all Deltek records, payroll records, time cards, and any other records or accounting documentation that shows time charged or compensation paid to any employee under this Service Contract.

From the Union's February 26, 2013, request:

Payroll and mission records for each employee who was on a mission to the THA, and was impacted by SRI's decision to have them return to "wheels up," —and documentation that verifies the payments were for the proper amount to each employee, outline of all holiday hours paid to represented employees over the past eighteen months and proof that the employees have been fully and properly compensated for the change in holiday pay calculation that changed their accrual from a standard 8 hours to a pro-rated amount, how much was paid to each employee, and details as to how that amount was calculated, a review of employee files to verify that all discipline related to "floor failures" has been properly expunged as required, payroll records and mission assignments for the previous six months on all SRI drivers and dispatchers that have performed work requiring troop or equipment transport that has historically been done by represented drivers and dispatchers, explanation, details, and records of any and all instances where drivers outside the bargaining unit have been used to supplement the available pool of represented drivers, list of all employees of SRI that are performing any work that the IAM is properly certified to represent, classification of driver's license held, and a demographic breakdown as to race, age, gender, and the number of hours that each has worked over the past six months.

From the Union's April 22, 2013, request:

A complete and detailed outline of duties for the classification of vehicle cleaner as SRI proposes to administer it, listing of all qualifications, licenses, training and/or experience

required of applicants for the position of vehicle cleaner, or that will be addressed upon the selection of the successful candidate(s), any duties that are different from those required of drivers who have historically performed this set of duties, proposed classification wage and benefit structure, criteria that SRI will use to determine the successful candidate or candidate, information that led to SRI's decision that an additional classification is warranted for bargaining unit work.

## 2. Analysis

In *Woodland Clinic*, 331 NLRB 735, 736 (2000), the Board held that an employer has an obligation to furnish to a union, on request, information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); and *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967).

Further, an employer must respond to the information request in a timely manner. *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992). An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). The Board has held that “An employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities.” *Associated General Contractors of California*, 242 NLRB 891, 893 (1979). In addition the Board has stated that “where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required.” *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd. per curiam* 531 F.3d 1381 (6th Cir. 1976).

Information requested dealing with the bargaining unit employees is presumptively relevant. *Int'l Protective Services, Inc.*, 339 NLRB 701 (2003). Such relevant information includes an employer's dress code policy (*Albertson's Inc.*, 351 NLRB 254, 315 (2007)) and work schedules (*Castle Hill Health Care Center*, 355 NLRB 1156, 1181–1182 (2010)). Further, information requested in order to assess an employer's position in bargaining is also presumptively relevant. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

Relevant and necessary information must be furnished on request, without unreasonable delay. It has been held that a delay in furnishing information of 7 weeks was unreasonable. *Landmark Foods, Inc.*, 356 NLRB No. 170, slip op. at 18 (2011); *El Paso Electric Co.*, 355 NLRB 428, 458 (2010); *Bundy Corp.*, 292 NLRB 671 (1989); and *Woodland Clinic*, 331 NLRB 735, 737 (2000).

General Counsel contends that all of the information the Union sought was presumptively relevant and Respondent's failure to furnish and unreasonable delay in furnishing the information requested violated Section 8(a)(5) of the Act. I find the list of items requested by the Union, including but not limited to work place policies, employee handbooks, work assignments, safety protocol, training, are information that goes to the core of working conditions and are presumptively relevant. To the extent that the Union's request sought nonbargaining unit information relating to proposals made by Respondent at the bargaining table, its relevance was adequately demonstrated. *Landmark Foods, Inc.*, 356 NLRB No. 170, slip op. at 18 (2011).

Respondent takes the position that it did not provide the requested information due to its concerns about disclosure compromising its confidentiality interests, citing *Detroit Edison v. NLRB*, 440 U.S. 301, 315, 318–320 (1979). Under its theory of the case, Respondent did not refuse to supply information it considered confidential, but that it bargained to impasse with the Union over a confidentiality agreement to protect its interests while providing the Union the information it needed. For the reasons stated below, I reject this argument.

The only information that Respondent provided to the Union was on March 21, 2012, when it provided the drivers licenses of bargaining unit employees, its dress and drug policies. It took Respondent 8 weeks to provide this simple nonconfidential information. This was an unreasonable delay. *Landmark Foods, Inc.*, 356 NLRB No. 170, slip op. at 18 (2011); *El Paso Electric Co.*, 355 NLRB 428, 458 (2010); *Bundy Corp.*, 292 NLRB 671 (1989); and *Woodland Clinic*, 331 NLRB 735, 737 (2000).

I find that in refusing to furnish the information itemized above and in unreasonably failing to furnish information in a timely manner, Respondent has violated Section 8(a)(5) of the Act.

D. Complaint Allegation 8(B)(I), as Amended at the Hearing, Alleges That From September 7, 2011 Through December 2011, Respondent Failed to Meet at Reasonable Times and Places for Bargaining

1. Facts

On May 12, 2011,<sup>54</sup> Respondent recognized the Union and requested dates for bargaining for June 2011. After Respondent recognized the Union in May 2011, the parties did not meet pending the Regional Director’s consideration of the Union’s charge that Respondent had refused to hire Union bargaining committee members.

On August 10, 2011,<sup>55</sup> the Union indicated it was available to bargain September 7 and 8 and September 12 through 16, 2011. On August 15, Respondent acknowledged the Union’s proposed dates. On August 17,<sup>56</sup> Respondent proposed meeting September 20 and 21 and September 27–29. On August 18,<sup>57</sup> the Union agreed to meet on these dates. On August 21,<sup>58</sup> Respondent claimed it could not meet on all of the dates in September, only one set of dates. On August 25,<sup>59</sup> the Union proposed meeting on September 28 and 29. On September 23, 2011, attorney Thompson informed Union representative Thompson that one of his law partners had experienced a death in the family and, therefore, the scheduled negotiations needed to be cancelled.<sup>60</sup> In this email Attorney Thompson promised to “provide the union with additional dates shortly.” In reply, Union Representative Thompson emailed his understanding of the

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<sup>54</sup> Id.

<sup>55</sup> GC Exh. 7.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id..

<sup>60</sup> Id. at p. 8.

situation, but cautioned that the pass-through date was looming, and that the Union would not willingly reschedule in the future.<sup>61</sup> Three weeks later, on October 14, 2011, Attorney Thompson had still not provided the additional dates he had promised, prompting the Union to renew its request for bargaining dates.<sup>62</sup> There is no evidence that bargaining took place.

On November 2, 2011, the Union sent Respondent’s counsel an email requesting bargaining for a collective-bargaining agreement<sup>63</sup> and on November 7, 2011 sent the Union’s proposed contract.<sup>64</sup> Respondent’s counsel acknowledged receipt of the proposed collective-bargaining agreement on November 14, 2011.<sup>65</sup> On November 15, 2011, the Union indicated that it had not received a response to its proposal. Again on November 17, 2011,<sup>66</sup> the Union requested to confer with Respondent’s counsel. Despite promises to send a wage proposal nothing was forthcoming from Respondent as of November 18, 2011.<sup>67</sup> Not until November 19, 2011, did counsel for Respondent provide a proposed bridge agreement<sup>68</sup> for one year’s duration covering only wages and health and welfare benefits. On November 21, 2011<sup>69</sup>, the Union again requested bargaining on several dates in early December. Following this conversation, Cummings specifically offered to meet and bargain on December 5-7, 2011.<sup>70</sup> When Respondent did not provide the wage proposal bridge agreement, as promised, Cummings emailed the following day, and Attorney Thompson said his client was “finalizing” its proposal.<sup>71</sup> Two days later, on November 19, 2011, Attorney Thompson sent Cummings Respondent’s proposed bridge agreement, which essentially stated that it was willing to pay the minimum wage currently dictated by the SCA.<sup>72</sup>

On November 21, 2011, Union Representative Thompson emailed<sup>73</sup> Lawson that the Union was available to bargain on December 5 through 7, and 12 through 16, 2011. Cummings forwarded this email to Attorney Thompson, who replied that Lawson was on vacation until some unspecified time and that he would respond with dates.<sup>74</sup> The following day, Cummings requested that Respondent meet in early December, 2011.<sup>75</sup> A week later, on November 29, 2011, not having heard back, Cummings again requested that Respondent provide its available bargaining dates in early December.<sup>76</sup> Finally, on December 1, 2011, Thompson emailed Cummings offering December 14 and 15, 2011, as bargaining dates, which Cummings

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<sup>61</sup> Id..

<sup>62</sup> Id. at p. 9.

<sup>63</sup> GC Exh. 8.

<sup>64</sup> Id.

<sup>65</sup> GC Exh. .

<sup>66</sup> GC Exh. 10

<sup>67</sup> Id.

<sup>68</sup> GC Exh. .

<sup>69</sup> GC Exh. .

<sup>70</sup> GC Exh.10, p. 5.

<sup>71</sup> Id.

<sup>72</sup> GC Exh. 11.

<sup>73</sup> GC Exh. 12.

<sup>74</sup> Id.

<sup>75</sup> Id. at p. 6.

<sup>76</sup> GC Exh. 13, p. 1.

accepted.<sup>77</sup> Shortly after the parties finally agreed on these dates, Respondent changed its legal counsel.

## 2. Analysis

Section 8(d) of the Act provides in pertinent part:

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times . . . .

In *J.H. Rutter-Rex Mfg. Co.*, 86 NLRB 470, 506 (1949), the Board found that the duty to meet and confer:

Encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for [bargaining] sessions when they are requested and in the elimination of obstacles thereto, comparable to his other business affairs of importance.

The Board has held that delaying the scheduling of meetings reflects a parties' intent to frustrate the bargaining process and to bargain in bad faith. *Regency Service Carts*, 345 NLRB 671, 672–673 (2005); *Lower Bucks Cooling & Heating*, 316 NLRB 16, 22 (1995). The Board has found that the failure to schedule bargaining sessions for from 6 weeks to almost 3 months does not satisfy an employer's obligation to meet and bargain at reasonable times. *Fruehauf Trailer Services, Inc.*, 335 NLRB 393, 393 (2001); *Reed & Prince Mfg. Co.*, 96 NLRB 850, 858 (1951).

An employer may not avail itself of the “busy negotiator” defense as an excuse for its failure to meet at reasonable times. *CalexCorp.*, 322 NLRB 977, 978 (1997). Indeed, it is well settled that “an employer's chosen negotiator is its agent for the purposes of collective bargaining, and that if the negotiator causes delays in the negotiating process, the employer must bear the consequences.” *Id.*, citing *O & F Machine Products Co.*, 239 NLRB 1013, 1018–1019 (1978); *Barclay Caterers*, 308 NLRB 1025, 1035–1037 (1992).

General Counsel contends that Respondent violated Section 8(a)(5) of the Act through its delay and refusal to meet and bargain at reasonable times. In its brief Respondent takes no position concerning this allegation.

The record is clear that Respondent failed to meet its obligation to meet at reasonable times for bargaining with the Union. Despite repeated efforts to seek mutually agreeable dates, Respondent again and again found some excuse to delay and cancel bargaining sessions from

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<sup>77</sup> *Id.* at p. 4.

September 7, 2011 through December 2011, a period of almost 4 months. This failure to meet at reasonable times demonstrates a failure to bargain in good faith in violation of Section 8(a)(5) of the Act.

E. Complaint paragraph 8(b)(iii) alleges that between September 2011 and May 2013, Respondent has failed to bargain with the Union for a confidentiality agreement, protective order or other appropriate procedure to address Respondent's confidentiality in violation of Section 8(a)(5) of the Act.

#### 1. Facts

In a February 28, 2012, email<sup>78</sup> Respondent's attorney, Martin, for the first time raised the issue of an agreement between Respondent and the Union concerning information that Respondent considered confidential.

At the next bargaining session after he received the above email, Cummings raised the issue of a nondisclosure agreement. Cummings said he needed to review Respondent's policies to get bargaining moving. According to Cummings there was considerable discussion about what should be in a confidentiality agreement and Martin claimed that Respondent was concerned that the information the Union requested might be used by a competitor on bidding practices. Martin did not specify what information the Union requested might be confidential. Cummings said the Union would be protective of information Respondent provided and would only be used for bargaining purposes. Cummings said the Union wanted to see what Respondent needed to have and would work from there.

During bargaining on April 12, 2012,<sup>79</sup> Cummings asked where the confidentiality agreement was. Martin said that another law firm was handling it. When Cummings offered to prepare the agreement, Martin said it was in the works. When asked the status of the agreement, Lawson said Martin had the information.

In an email<sup>80</sup> dated April 30, 2012, to Martin and Lawson, Cummings asked where the confidentiality agreement was. On May 1, 2012, Martin sent Cummings the confidentiality agreement/nondisclosure agreement (NDA). Among things the agreement provided Respondent with carte blanche to determine the definition of confidential material. The agreement provided for attorneys' fees and liquidated damages of \$5000 per breach of the terms of the agreement, regardless of actual responsibility for the breach. The NDA defined as confidential information, "labor cost data, employment policies and other non-public operational information which is or could be of benefit to an actual or potential competitor of Employer." The NDA further gave Respondent the unlimited right to redact what it considered irrelevant to collective bargaining.<sup>81</sup>

After Cummings received the NDA from Martin, he sent it to the Union's international counsel because he could not agree to the \$5000 penalty provided therein. On May 15, 2012,

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<sup>78</sup> GC Exh. 18.

<sup>79</sup> GC Exh. 43.

<sup>80</sup> GC Exh. 46.

<sup>81</sup> GC Exh. 45.



Cummings sent Martin and Lawson a revised NDA, which eliminated attorneys' fees and liquidated damages.<sup>82</sup>

5 With no further response from Respondent about the NDA, on December 11, 2012, the Union sent Respondent a signed copy of the Union's May 15, 2012, proposed NDA<sup>83</sup>. On January 2, 2013, Respondent's attorney, Hutcheson, stated that the NDA was still a subject of bargaining.<sup>84</sup> On January 12, 2013, Hutchinson sent the Union a revised NDA, including attorneys' fees and liquidated damages.<sup>85</sup> The liquidated damages provision was reduced to \$4000 per breach. On January 14, 2013, Cummings sent Respondent a counterproposal to its newest NDA.<sup>86</sup> In this counterproposal, the Union agreed to injunctive relief. The Union agreed to damages assessed through the injunctive process. The Union agreed to receive only that information they were entitled to under Board law, i.e., the information necessary to fulfill the duties of representation. In bargaining on January 15, 2013, Respondent rejected the Union's NDA counter-proposal. There is no record evidence that the Union declared "impasse" on the NDA on January 15, 2013. While Lawson's testimony was that the Union declared impasse on the NDA on January 15, 2013, I will draw an adverse inference that the Union did not take such a position since Respondent failed to produce Lawson's bargaining notes for the January 15, 2013, bargaining session pursuant to General Counsel's subpoena.

Cummings testified without contradiction that in early 2013, the Union had proposed that the Union would be satisfied to look at requested information at the bargaining table without actually taking possession of it. Hutcheson told Cummings that he thought that might work and told him that Respondent would get documents to the Union. No further documents were forthcoming until May 1, 2013, when Respondent provided its drug and dress code policies.<sup>87</sup> Both policies were marked "confidential" and "proprietary." These documents were furnished despite the lack of an NDA.

## 2. Analysis

The party asserting a confidentiality defense in response to a refusal to furnish information allegation has the burden of proof and must demonstrate a "legitimate and substantial" confidentiality interest. *Woodland Clinic*, 331 NLRB 735, 737 (2000). In *Woodland Clinic* the Board held that the employer failed in its burden when it failed to specify the nature of any concerns regarding the requested information. The respondent had not produced any evidence supporting its asserted claim of confidentiality. A naked claim of confidentiality is an insufficient defense to a request for relevant information where there was no evidence presented to support such a claim.

Also in *Lasher Service Corp.*, 332 NLRB 834, 840 GC Exh.841 (2000) the Board found that the respondent had failed to demonstrate its confidentiality and propriety claims out-weigh

<sup>82</sup> GC Exh. 47.

<sup>83</sup> GC Exh. 48.

<sup>84</sup> Id.

<sup>85</sup> GC Exh.50

<sup>86</sup> R. Exh. 1.

<sup>87</sup> GC Exhs. 21 and 22.

the Union's need for the information. The Board also found that if a union agrees to keep the information confidential and there is no evidence to conclude that the union would breach such a promise, respondent cannot carry its burden, concluding:

5           The Supreme Court in *NLRB v. Detroit Edison Co.*, 440 U.S. 301 (1979) found that, in  
certain situations, confidentiality claims may justify a refusal to provide relevant  
information. In making these determinations the trier of fact must balance the union's  
10           need for the information sought against the legitimate and substantial confidentiality  
interests of the employer. However, it is also well settled that as a part of this balancing  
process, the party making a claim of confidentiality has the burden of proving that such  
interests are in fact present and of such significance as to outweigh the union's need for  
the information. Here the Union agreed to keep the information confidential. The  
15           Respondent introduced no evidence it sought an accommodation and there is no evidence  
the Union would not have accepted any such accommodation. Respondent has provided  
the Union with some of the sought information in the parts department information  
request, thus undermining its claim of confidentiality of this information. There was no  
instance where the Union was shown to have broad cast confidential information  
20           provided by Respondent. There is no basis to conclude the Union would breach any  
promise to meet Respondent's confidentiality concerns.

          In *Rototype Division Pertec Computer Corp.*, 284 NLRB 810, 811 (1987), the Board  
found that the respondent failed to meet its obligation under Section 8(a)(5) to furnish alleged  
25           confidential information despite its belated offer to allow the union's financial analyst to look at a  
cost study on its premises, without allowing him to take a copy for further analysis. Moreover,  
the Board held that respondent's confidentiality claim established no defense. The respondent  
failed to show why it could not have supplied the information to the union's financial analyst  
30           under the union's proffered agreement that the information would be used only by the analyst  
and would not be disseminated. There was no evidence that the union was unreliable in  
maintaining confidentiality agreements. The Board noted:

35           If the Respondent's broad assertion of confidentiality were to prevail here, unions  
would rarely be held entitled to any information that employers had reason to  
withhold from third parties.

          If the employer can establish a confidentiality interest, it has the duty to seek an  
accommodation through the bargaining process. *National Steel Corp.*, 335 NLRB 747, 752  
40           (2001). As part of this, the employer must bargain towards an accommodation of both the  
union's need for the information, as well as the employer's legitimate and substantial  
confidentiality concerns. *Exxon Co. USA*, 321 NLRB 896, 899 (1996).

45           Here, Respondent has failed in its burden of establishing that its confidentiality  
interests outweigh the need of the Union for the information requested to fulfill its duty  
as bargaining representative. In the instant case each item the Union requested was either  
presumptively relevant or it was demonstrated to be necessary and relevant to the  
Union's function as bargaining representative. The evidence further reflects that  
Respondent has made no more than naked assertions to the Union that the necessary and  
relevant information it is withholding is of a confidential nature. Such bald assertions are  
insufficient to sustain its burden. Moreover, the record reflects that the Union has made

repeated offers to use the information only for representational purposes. The Union went so far as to suggest that it would only view the requested information at the bargaining table. Respondent was unable to offer evidence that the Union was unreliable in keeping the requested information confidential.

Respondent's argument that it was somehow privileged to withhold the requested information because the parties reached impasse on the subject of a confidentiality agreement is without merit. Contrary to Respondent's assertion, there is no evidence that the parties reached impasse on the subject of a confidentiality agreement. Moreover, the Union gave Respondent ample options to insure its confidentiality interests would be considered. The Union told Respondent it would use the information only for representational purposes and by only viewing the information at the bargaining table.

Counsel for the General Counsel argues that Respondent made no effort to meet its obligation and, thus, violated the Act by failing to bargain in good faith with the Union over the NDA and by taking the position that the parties bargained to impasse over the NDA Respondent further violated Section 8(a)(5) of the Act..

Respondent contends that the parties bargained to impasse over the NDA. It is Respondent's position that the parties had reached agreement on all terms of an NDA but for liquidated damages. Since the Union would not agree to liquidated damages, Respondent contends that the parties were at impasse by January 15, 2013 and Respondent did not fail to bargain in good faith.

With respect to bargaining in good faith over an accommodation to address Respondent's confidentiality interests, Respondent's argument must be rejected since it would set the Board's standard set forth in *Lasher Service Corp.*, supra, on its head. Respondent would have the Board find that because the Union did not agree to its only proposal for an accommodation that it bargained in good faith. It argues further that this justifies a finding that the parties reached impasse on this subject. This argument conveniently ignores the fact that the Union made many offers to reach an accommodation including an offer of injunctive relief, a representation that it would use the information only for representing bargaining unit employees and that it would view the information only at bargaining meetings. Respondent not only rejected these offers of accommodation, it failed to offer an iota of evidence that the Union was untrustworthy in maintaining the confidentiality of the information sought. Significantly, Respondent has failed to establish that the information it withheld was confidential in nature.

With respect to the first prong of the test, Respondent has failed to establish it has a legitimate confidentiality interest in refusing to turn over any information. In testimony, Lawson claimed that all of the requested information was confidential. This claim was not supported by any evidence but was a naked claim that all information sought by the Union was confidential because if divulged to a competitor it would put Respondent at a disadvantage. Such a sweeping assertion suggests the lack of good faith in its assertion. No evidence was proffered as to why any particular item of information the Union requested was of a confidential nature. Further, Respondent assumes that its proposal for an NDA that included liquidated damages for each breach of the agreement was the only legitimate bargaining proposal

To the contrary, it is Respondent who failed to bargain in good faith in refusing to accept the Union's multiple offers of accommodation and instead steadfastly maintained, to impasse, that the only accommodation was its own NDA. Accordingly, I find that Respondent violated Section 8(a)(5) of the Act by refusing to bargain in good faith with the Union over an accommodation for a confidentiality agreement or other process.

F. Complaint Paragraph 8(B)(iv) Alleges That on January 15, 2013, Respondent Failed and Refused to Bargain With the Union by Taking the Position That it Reached Impasse With the Union In Bargaining for a Confidentiality Agreement in Violation Of Section 8(A)(5) of the Act

As noted above, Respondent took the position that the parties reached impasse concerning the NDA. For the reasons set forth above, it is clear that no impasse was reached on this subject. Rather, Respondent seized upon the Union's rejection of its only proposal for accommodation, despite the Union's many offers, and declared impasse in violation of Section 8(a)(5).

G. Complaint Paragraph 8(C) Alleges That on Or About August 19, 2013, Respondent Withdrew Recognition of the Union as Exclusive Collective-Bargaining Representative of Bargaining Unit Employees in Violation of Section 8(A)(5) of the Act.

#### 1. Facts

Between March 28 and April 3, 2013, 16 employees signed a document entitled "Petition to Remove Union as Representative,"<sup>88</sup> requesting that Respondent immediately withdraw recognition from the Union due to lack of majority status. On April 4, 2013, Respondent's employee Sondra Stilwell gave Respondent's project manager, Cox, a copy of the above petition to decertify the Union

By letter, dated August 19, 2013,<sup>89</sup> Respondent notified the Union that it was withdrawing recognition. The letter states in part:

On behalf of SRI, please be advised that our client has received a petition signed by a clear majority of bargaining unit employees expressly requesting that SRI "immediately withdraw recognition from the union, as it does not enjoy the support of a majority of employees in the bargaining unit." Because SRI now knows that your union lacks majority support, SRI hereby withdraws recognition of your union and will cease any further bargaining with respect to this bargaining unit.

The parties stipulated that on August 19, 2013, there were 27 employees in the bargaining unit but the parties disputed whether employee Scott Olsen was employed in the bargaining unit on that date.<sup>90</sup> In Respondent's September 6, 2013 position statement to the Board<sup>91</sup> it attached a list of 28 employees in the bargaining unit as of August 19, 2013. This position is confirmed in Respondent's brief in which it concedes there were 28 employees in the bargaining unit when it

<sup>88</sup> GC Exh. 54.

<sup>89</sup> GC Exh. 35.

<sup>90</sup> GC Exh. 57, items 7 and 8.

<sup>91</sup> GC Exh. 76.

withdrew recognition.<sup>92</sup> I will treat both of Respondent’s statements as admissions against interest. *Massillon Community Hospital*, 282 NLRB 675, 675 fn. 5 (1987). I find that as of August 19, 2013, there were 28 bargaining unit employees. Thus on August 19, 2013, only 14 of the 28 bargaining unit employees had signed the petition.

## 2. Analysis

General Counsel contends that the decertification petition cannot support Respondent’s withdrawal of recognition because the petition does not reflect a loss of majority support for the Union, because Respondent withdrew recognition while still under a bargaining obligation in the settlement agreement and before a reasonable period of time had passed and because Respondent’s illegal conduct tainted both the petition and Respondent’s subsequent withdrawal of recognition.

Respondent argues that its withdrawal of recognition was lawful since it received a decertification petition from a majority of bargaining unit employees. Respondent seems to contend that it illegally bargained with the Union for 3 months but that for unknown reasons it could not longer defend this position and withdrew recognition. In its brief Respondent concedes that only 14 of 28 bargaining unit employees on August 19, 2013 had signed the petition.

In *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 725 (2001), the Board set forth a new test for determining when an employer may withdraw recognition from its employees’ collective bargaining representative. The Board rejected the “good faith doubt” standard and held that an employer may unilaterally withdraw recognition of an incumbent union “only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit.” As the Board found in *SFO Good-Nite Inn, LLC*, 357 NLRB No. 16, slip op. at 4 (2011), an employer needs “50-percent-plus-one to justify a unilateral withdrawal of recognition.” In *Alpha Associates*, 344 NLRB 782, 784–785 (2005), the Board held that, “an employer may withdraw recognition from the union only if it possesses evidence that the union has in fact lost majority support.”

Further an employer may not withdraw recognition from a union while there are unremedied unfair labor practices tending to cause employees to become disaffected from the union. In *LTD Ceramics, Inc.*, 341 NLRB 86, 88 (2004), the Board held that:

Evidence in support of a withdrawal of recognition, “must be raised in a context free of unfair labor practices of the sort likely, under all the circumstances, to affect the union’s status, cause employee disaffection, or improperly affect the bargaining relationship itself.” *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996) (*Lee Lumber II*), *affd.* in part and remanded in part 117 F.3d 1454 (D.C. Cir. 1997), citing *Guerdon Industries*, 218 NLRB 658, 659, 661 (1975).

In *Lee Lumber II*, the Board held that in order to show that unfair labor practices taint a union’s loss of majority support, there must be proof of a causal relationship between the unfair

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<sup>92</sup> See R. post-hearing Br. at p. 36.

labor practice and the ensuing events indicating a loss of support. To determine whether a causal relationship has been established the following factors must be considered: the length of time between the unfair labor practice and the withdrawal of recognition, the nature of the violation, including the possibility of a detrimental or lasting effect on employees, the tendency to cause employee disaffection, and the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

Here, I have found that Respondent committed a plethora of unfair labor practices leading up to its bargaining unit employees signing the decertification petition. These unfair labor practices include unilaterally changing employees' holiday pay in September 2011, refusing to furnish the Union with information necessary to engage in collective bargaining from January 2012 to the present, refusing to bargain in good faith by refusing to meet at reasonable times from September through December 2011, refusing to bargain in good faith with the Union over the terms of an accommodation for Respondent's confidentiality interest from February 2012 to the present and unilaterally declaring impasse on the subject of an accommodation to resolve Respondent's concerns about confidential information on January 15, 2013.

Applying the *Master Slack* criteria, there is ample evidence to suggest that Respondent's unfair labor practices are of the sort likely, under all the circumstances, to affect the Union's status, cause employee disaffection, or improperly affect the bargaining relationship itself. Respondent's refusal to provide information beginning in January 24, 2012, and continuing to the present, precluded any meaningful bargaining and led to dissatisfaction among employees and the decertification petition. Respondent's failure to bargain in good faith in by refusing to agree to bargaining sessions, refusing to engage in good-faith bargaining over an accommodation regarding confidentiality and declaring impasse in violation of Section 8(a)(5) of the Act also likely had a detrimental effect on employees. The Board in *Fruehauf Trailer Services*, 335 NLRB 393, 394–395 (2001) found that where an employer had refused to meet at reasonable times, such conduct fatally tainted a decertification petition, rendering withdrawal of recognition unlawful under *Master Slack*. Moreover, Respondent's unilateral change in holiday pay is the sort of unfair labor practice the Board has found to be not a mere technical infraction but rather a most serious violation that strikes at the heart of the Union's legitimate role as representative of the employees. Under such circumstances, where a union is unlawfully deprived of the opportunity to represent the employees, it is altogether foreseeable that the employees will soon become disenchanted with that union, because it apparently can do nothing for them. *Lexus of Concord, Inc.*, 330 NLRB 1409, 1416 (2000). The unfair labor practices continued unabated from September 2011 to the present time and were proximate in time to the signing of the decertification petition. Thus General Counsel has established the causal relation between Respondent's unfair labor practices both as to motivation and timing.

Respondent never had evidence that a majority of its employees rejected the union. At best the evidence reflects that only half of the bargaining unit employees employed by Respondent on August 19, 2013 had signed the decertification petition. Under extant Board law this is insufficient evidence to demonstrate a loss of majority support, i.e., 50 percent plus one. Moreover, Respondent's own unfair labor practices tainted the petition rendering it incapable of supporting Respondent's withdrawal of recognition. By withdrawing recognition of the Union on August 19, 2013, Respondent violated Section 8(a)(5) of the Act.

## H. Revocation of the settlement agreement

## 1. Facts

5 On January 30, 2013, the Regional Director for Region 19 approved the Settlement Agreement and Notice to Employees set forth in the complaint.<sup>93</sup> Pursuant to the settlement agreement Respondent agreed to remedy the unfair labor practices alleged in the complaint.<sup>94</sup> As set forth in paragraph 11 of the complaint, it is alleged that Respondent has partially failed to  
10 comply with the terms of the settlement agreement.

The settlement agreement provided that Respondent would comply with all of the terms and provisions of the notice to employees attached to the settlement agreement and that if Respondent failed to comply, the Regional Director would issue a complaint including the  
15 allegations covered by the “scope of the agreement.” The notice to employees<sup>95</sup> provided in pertinent part:

20 WE WILL, upon request by your Union, bargain with the Union for a reasonable period of time until either an agreement has been reached on a collective bargaining agreement or a lawful impasse has occurred.

WE WILL NOT refuse to meet with or propose dates to negotiate with the Union or delay in doing so.

25 WE HAVE provided the Union with information it requested on November 11, 2011. WE HAVE also provided the Union with certain information it requested on January 24, 2012 and subsequent follow-up requests.

30 WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your exclusive collective bargaining representative, or unreasonably delay in providing such information. To the extent any requested relevant information also contains confidential information, WE WILL bargain with the Union for  
35 a confidentiality agreement and then provide the Union with relevant, requested confidential information pursuant to the parties’ confidentiality agreement.

40 WE WILL, upon request by your Union, rescind our rules requiring you to: return from THA missions prior to “wheels up”; provide a written explanation of a “floor failure,”

45 WE WILL pay you for the wages and other benefits lost because of the changes to terms and conditions of employment that we made without first bargaining with the Union.

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<sup>93</sup> GC Exh. 1(BB), 36.

<sup>94</sup> GC Exh. 1(y).

<sup>95</sup> GC Exh. 36, pp. 4–5.

WE WILL upon request by your Union, bargain with the Union for a reasonable period of time until either an agreement has been reached on a collective bargaining agreement or a lawful impasse has occurred.

WE WILL meet with your Union twice a week every other week, for a total of at least twentyfour (24) hours bargaining time, beginning [within 14 days of the approval of the Settlement Agreement], at a location to be mutually agreed upon until we reach a collective bargaining agreement or a legal impasse.

It is undisputed that Respondent received notice of the approval of the settlement agreement on February 24, 2013, and Respondent was required to post the notice until at least April 24, 2013. On February 26, 2013, the Union requested that Respondent cease its unilateral changes and requested extensive information relating to the enforcement of the settlement.<sup>96</sup>

Complaint paragraph 11 alleges that since on or about January 30, 2013, Respondent has failed to expunge from its records the discipline issued to Kathy Ausley described in paragraphs 6(c) and 6(f) of the complaint, has required employees to report time into Respondent's Deltec system and has refused to provide Region 19 with records to enable it to determine the make-whole remedy to employees for the unilateral changes described in paragraphs 6(a) and 6(b) of the complaint, i.e., changes to holiday pay and waiting time at the THA. Complaint paragraph 11(b) alleges that in light of Respondent's conduct described in complaint paragraphs 6(a), (e), 7(l), 8(b) and 11(a) Respondent violated the terms of the settlement agreement.

The parties stipulated that on August 29, 2013, the compliance officer for Region 19 sent a letter to Respondent's counsel requesting information regarding the calculation of backpay owed due to unilateral changes to THA mission waiting times and holiday pay.<sup>97</sup> In his letter to Respondent dated August 29, 2013<sup>98</sup>, regarding complaint paragraph 7(c) of the original complaint,<sup>99</sup> the change in THA waiting times, the compliance officer requested "dispatch and payroll records showing all hours worked and the gross earnings" of Unit employees.<sup>100</sup> Regarding original complaint paragraph 7(a),<sup>101</sup> holiday pay, the compliance officer asked for "payroll records" for employees who received less than 8 hours for any paid holiday from April 2011 to the August 29, 2013, showing their "hourly rate(s) of pay and the number of hours for which each was paid for each Holiday."<sup>102</sup> The parties stipulated that on September 6, 2013, Respondent's counsel replied in writing to the compliance officer.<sup>103</sup> In his response Respondent claimed that there was no backpay owed and provided no information. The parties further stipulated<sup>104</sup> that not until Counsel for the General Counsel served its subpoena No. B-715313 in preparation for the instant litigation did Respondent finally provide the holiday pay records,

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<sup>96</sup> GC Exh. 30.

<sup>97</sup> GC Exh. , par. 11.

<sup>98</sup> GC Exh. 67.

<sup>99</sup> GC Exh. 1(y).

<sup>100</sup> GC Exh. 67.

<sup>101</sup> GC Exh.

<sup>102</sup> GC Exh. 67.

<sup>103</sup> GC Exh. 57, par. 12; GC Exh. 68..

<sup>104</sup> Id., par. 10 and 14.



dispatcher 2401s, dispatcher logs, and payroll records necessary to determine backpay liability under the Settlement.

## 2. analysis

A settlement agreement may be set aside if there has been a failure to comply with the provisions of the settlement or if postsettlement unfair labor practices are committed. *Twin City Concrete, Inc.*, 317 NLRB 1313, 1313 (1995). Whether a settlement agreement is to be revoked must be determined by the exercise of sound judgment based on all the circumstances of each case. *Nations Rent, Inc.*, 339 NLRB 830, 831 (2003).

Counsel for the General Counsel asserts that the Regional Director appropriately set aside certain portions of the settlement agreement approved on January 30, 2013, due to Respondent's failure to comply with the settlement agreement's terms and its egregious post-settlement unfair labor practices.

Respondent contends that it was in compliance with the terms of the settlement agreement and it argues in its brief that it has committed no unfair labor practices. Respondent takes the position that with respect to information requested by the Union and by General Counsel concerning THA missions and holiday pay, it could not prove a negative. In its letters to the Union and the compliance officer, Respondent claims it requested clarification that was never provided. Respondent also contends that it would have been burdensome to produce the requested documents, therefore it was in compliance with the "spirit if not the letter of the Settlement Agreement."<sup>105</sup>

After signing the settlement agreement, Respondent failed to comply with its terms. In the settlement agreement, Respondent agreed to expunge from its records the discipline received by Ausley. Instead of doing this, Respondent informed the Union that there was no discipline and, as such, none could be expunged.<sup>106</sup> While the notice requires Respondent to make whole employees for losses due to the unilateral changes, Respondent refused to provide the necessary information to the compliance officer for Region 19, just as it has refused to provide the same information to the Union. Without this information, the compliance officer could not have determined Respondent's make-whole responsibility pursuant to the settlement agreement. Respondent's argument that it would have been burdensome to produce these records is belied by the fact that these records were ultimately, if untimely produced pursuant to subpoena.

Respondent's post-settlement unfair labor practices also require revocation of the settlement agreement. After signing the settlement agreement, Respondent continued its refusal to provide the Union with relevant and necessary information in violation of Section 8(a)(5) of the Act as found above. Further, after Respondent signed the settlement agreement on January 24, 2013, and promised to bargain in good faith or to impasse regarding an accommodation regarding its confidentiality issues, it in fact refused to bargain in good faith over the terms of a confidentiality agreement and took the position, found above to violate Section 8(a)(5) of the Act, that the parties reached impasse on the non disclosure agreement as of January 15, 2013.

<sup>105</sup> R. post-hearing Br. at p. 35.

<sup>106</sup> GC Exh. 31.

Finally, Respondent's decision to withdraw recognition of the Union, found above to have violated Section 8(a)(5) of the Act, demonstrated its failure to comply with the settlement agreement.

- 5           Based on the above, the Regional Director was more than justified in revoking the January 30, 2013 settlement agreement.

#### Conclusions of Law

- 10           1. Respondent Strategic Resources, Inc., is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

- 15           2. International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge W-24 (Union), is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive collective-bargaining representative of Respondent's employees in the following appropriate collective-bargaining unit:

20           Included: All full-time and regular, part-time employees employed by the employer out of the following Joint Base Lewis McChord, Washington operations, Warrior Transition Battalion (WTB), 1<sup>st</sup> Joint Mobilization Battalion (JMB), and Transportation Motor Pool (TMP) who are employed as dispatchers and drivers of a vehicle in the transportation of military personnel.

25           Excluded: All confidential and managerial employees, guards and supervisors as defined in the Act.

- 30           3. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(5) and (1) of the Act:

a. Unilaterally changing bargaining unit employees' formula for calculating holiday pay.

35           b. Refusing to provide and unreasonably delaying in providing the Union with information relevant and necessary to its function as collective bargaining representative of bargaining unit employees.

40           c. Refusing to meet with the Union at reasonable times and/or places for bargaining.

d. Refusing to bargain in good faith with the Union for a confidentiality agreement, protective order or other procedure to address Respondent's alleged confidentiality concerns.

45           e. Refusing to bargain in good faith with the Union by taking the position that it had reached impasse with the Union on January 15, 2013 over bargaining for a confidentiality agreement, protective order or other procedure to address Respondent's alleged confidentiality concerns.

f. Refusing to bargain in good faith with the Union by withdrawing recognition of the Union as the exclusive collective bargaining representative of bargaining unit employees on August 19, 2013.

5 Other than the violations found above, I recommend that the remaining allegations of the complaint be dismissed.

#### REMEDY

10 In its posthearing brief Counsel for the General Counsel represents that it no longer seeks a remedy requiring Respondent to bargain with the Union regarding the bargaining unit employees since Respondent no longer employs those employees. While not stated, it appears that  
15 Respondent is no longer the contractor with the Department of Defense for troop transportation at JBLM. Counsel for the General Counsel requests that Respondent be required to mail the notice to employees to all bargaining unit employees employed during the period in which the unfair labor practices occurred. Counsel for the General Counsel further requests that the portion of the complaint requesting a bargaining order be withdrawn. Counsel for the General Counsel's  
20 request to withdraw that the portion of the complaint requesting a bargaining order is granted.

The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other  
25 electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 8 (2010).

The Board has held that discriminatees be reimbursed for any excess taxes owed as a result of a lump sum backpay award and that Respondent be ordered to complete the  
30 appropriate paperwork as set forth in IRS Publication 975 to notify the Social Security Administration what periods to which the backpay should be allocated as requested in the remedy section of the complaint herein.

35 In *Don Chavas, LLC d/b/a, Tortillas Don Chavas*, 361 NLRB No. 10 (2014), Board ordered that it will routinely require the filing of a report with the Social Security Administration allocating backpay awards to the appropriate calendar quarters. The Board also held that it will routinely require respondents to compensate employees for the adverse tax consequences of receiving one or more lump-sum backpay awards covering periods longer than 1 year. The Board  
40 concluded that it is the General Counsel's burden to prove and quantify the extent of any adverse tax consequences resulting from the lump-sum backpay award and that such matters shall be resolved in compliance proceedings.

45 Pursuant to *Tortillas Don Chavas*, I will order that Respondent shall file a report with the Social Security Administration allocating any backpay awards to the appropriate calendar quarters.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.<sup>107</sup>

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## ORDER

Respondent, Strategic Resources, Inc., McLean, Virginia, its officers, agents, successors, and assigns shall

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## 1. Cease and desist from

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(a) Refusing to bargain in good faith with International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge W-24 as the exclusive collective bargaining representative of its employees in the following collective-bargaining unit:

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Included: All full-time and regular, part-time employees employed by the employer out of the following Joint Base Lewis McChord, Washington operations, Warrior Transition Battalion (WTB), 1<sup>st</sup> Joint Mobilization Battalion (JMB), and Transportation Motor Pool (TMP) who are employed as dispatchers and drivers of a vehicle in the transportation of military personnel.

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Excluded: All confidential and managerial employees, guards and supervisors as defined in the Act.

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(b) Unilaterally and without bargaining with the Union changing its bargaining unit employees' formula for calculating holiday pay.

(c) Refusing to provide and unreasonably delaying in providing information to the Union that is relevant and necessary to its function as collective-bargaining representative of bargaining unit employees.

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(d) Refusing to meet with the Union at reasonable times and/or places for bargaining.

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(e) Refusing to bargain in good faith with the Union for a confidentiality agreement, protective order or other procedure to address Respondent's alleged confidentiality concerns.

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(f) Refusing to bargain in good faith with the Union by taking the position that it had reached impasse with the Union on January 15, 2013 over bargaining for a confidentiality agreement, protective order or other procedure to address Respondent's alleged confidentiality concerns.

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<sup>107</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

(g) Refusing to bargain in good faith with the Union by withdrawing recognition of the Union as the exclusive collective-bargaining representative of bargaining unit employees on August 19, 2013.

5 (h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

10 (a) Make whole any employees for lost wages and other benefits as a result of our unlawful change in bargaining unit employees' formula for calculating holiday pay. My recommended order further requires that backpay shall be computed in accordance with  
15 *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

20 (b) The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 8 (2010).

25 (c) Provide the Union with the information it requested on January 24, February 21, February 28, March 13, March 15, 2012; February 26, April 22, and May 2, 2013.

30 (d) Compensate employees who lost wages due to our unlawful change in bargaining unit employees' formula for calculating holiday pay for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

35 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of  
40 backpay due under the terms of this Order.

45 (f) Within 14 days after service by the Region, post at its facilities in [city, State], copies of the attached notice marked "Appendix."<sup>108</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60

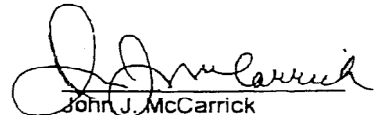
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<sup>108</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 5, 2011.

(g) Within 21 days after service by the Region, filed with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. February 4, 2015

  
 John J. McCarrick  
 Administrative Law Judge

## APPENDIX

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

After a trial at which we appeared, argued and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT refuse to bargain in good faith with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge W-24 as the exclusive collective bargaining representative of its employees in the following collective bargaining unit:

Included: All full-time and regular, part-time employees employed by the employer out of the following Joint Base Lewis McChord, Washington operations, Warrior Transition Battalion (WTB), 1<sup>st</sup> Joint Mobilization Battalion (JMB), and Transportation Motor Pool (TMP) who are employed as dispatchers and drivers of a vehicle in the transportation of military personnel.

Excluded: All confidential and managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally and without bargaining with the Union change our bargaining unit employees' formula for calculating holiday pay.

WE WILL NOT refuse to furnish or unreasonably delay in furnishing the Union with relevant and necessary information.

WE WILL NOT withdraw recognition from the Union and fail and refuse to bargain with the Union as your exclusive collective-bargaining representative.

WE WILL NOT refuse to meet with or refuse or delay proposing dates to negotiate with the Union.

WE WILL NOT fail and refuse to bargain in good faith with the Union regarding any confidentiality or non-disclosure agreements.

WE WILL NOT In any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL make whole all employees affected by our unilateral changes to our computation of holiday pay.

WE WILL provide the Union with the information it requested on January 24, February 21, February 28, March 13, March 15, 2012; February 26, April 22, and May 2, 2013.

Strategic Resources, Inc.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

915 2nd Avenue, Federal Building, Room 2948  
Seattle, Washington 98174-1078  
Hours: 8:15 a.m. to 4:45 p.m.  
206-220-6300.

The Board's decision can be found at [www.nlrb.gov/case/19-CA-070217](http://www.nlrb.gov/case/19-CA-070217) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 206-220-6284.